RNI No. MAHBIL /2009/31744
Reg. No. MH/MR/South-318/2013-15

महाराष्ट्र शासन राजपत्र

भाग एक–ल

वर्ष ६, अंक ३] गुरुवार ते बुधवार, मार्च २७-एप्रिल २, २०१४/चैत्र ६-१२, शके १९३६ [पृष्ठे ४०, किंमत : रुपये २३.००

प्राधिकृत प्रकाशन

(केंद्रीय) औद्योगिक विवाद अधिनियम व मुंबई औद्योगिक संबंध अधिनियम यांखालील (भाग एक, चार-अ, चार-ब आणि चार-क यांमध्ये प्रसिद्ध केलेल्या अधिसूचना, आदेश व निवाडे यांव्यतिरिक्त) अधिसूचना, आदेश व निवाडे.

IN THE INDUSTRIAL COURT, MAHARASHTRA AT MUMBAI

BEFORE SHRI U. R. PATIL, PRESIDENT

APPEAL (IC) No. 105 OF 2001 IN APPLICATION (BIR) No. 61 OF 1995.—Shri Namdeo Haribhau Gaikwad, C/o. Shri Kishore R. Deshpande, A/5, Bakul Niwas, Lallubhai Park, Andheri (W.), Mumbai 400 058.—*Appellant*—*Versus*—The General Manager, B. E. S. T. Undertaking, BEST House, Mumbai 400 039.—*Respondent.*

In the matter of an Appeal U/s. 84 of the B. I. R. Act, 1946.

CORAM.— Shri U. R. Patil, President.

Appearances.— Shri Kishore R. Deshpande, Ld. Representative for the Appellant.
Shri P. V. Dhobale, Ld. Advocate for the Respondent.

Oral Judgement

(Dated 18th June 2002)

The present Appeal is preferred by the Original Applicant feeling aggrieved of the judgment and order dated 9th February 2001 whereby the 4th Labour Court, Mumbai dismissed the application of the Applicant, which was filed U/s. 78 and 79 read with section 42(*4*) of the B. I. R. Act, 1946.

2. Brief facts giving rise to the case may be stated as follows :—

It is seen that the Applicant Mr. Gaikwad joined the services of the BEST Undertaking on 29th August 1981 as a Bus Driver. On 9th June 1994 he was driving the Bus near Gandhi Marg and was proceeding from Deonar to Wadala at about 8.40 p. m. and at that time a cyclist dashed the bus and sustained the head injury and died on the spot. It is submitted that he was driving the bus slowly and immediately stopped the bus at the place of accident. It is contended that at that time there was slight raining and the visuality of the road was poor. After the submission of the accident report, he was issued a charge-sheet under S. O. 20(j)- "habitual or gross neglect of work or habitual or gross negligence", on 15th July 1994. The departmental enquiry was conducted and the Enquiry Officer dismissed the Applicant bus driver w. e. f. 7th December 1994. The two appeals preferred by the delinquent were rejected by the Appellate Authorities. Approach letter was also given, but of no use and consequence.

3. The Applicant states that the enquiry conducted by the Enquiry Officer was in violation of the principles of natural justice. Enquiry Officer has not properly considered the evidence on record and it is claimed that the punishment of dismissal is shockingly disproportionate *vis-a-vis* the charge under S. O. 20 (j). Thus the Applicant prayed for the relief of the dismissal of the order as the same is illegal and invalid and to reinstate him with full backwages.

4. The Opponent BEST Undertaking by filing Written Statement Exh. C-1 resisted the application and the same may be summarised as under :—

It is asserted that the enquiry was conducted against the Applicant by following the principles of natural justice and he was given sufficient opportunity to defend the case and hence there is no cause of action for filing the present application. It is further submitted that on 9th June 1994 the Applicant drove the Bus No. MMK-6123 negligently and dashed against one cyclist and due to the said accident the cyclist expired. The Opponent states that in the departmental enquiry the Applicant was represented by the representative to represent/defend his case. The Trying Officer after going through the documentary and oral evidence rightly held that the charge under S. O. 20(j) was proved. It is submitted that the past record of the delinquent employee was not satisfactory and there were several punishments regarding the misconduct to his record and therefore the Trying Officer has rightly passed the order of dismissal. In short, the Opponent requested to dismiss the application.

5. I have gone through the record and proceedings and heard Mr. Kishore R. Deshpande, Ld. Representative for the Appellant and Mr. P. V. Dhobale, Ld. Advocate for the Respondent. The following points arise for my determination with my findings thereon, as below :—

Points.—

(1) Whether Appeal (IC) No. 105/2001 is to be allowed by setting aside the judgement and order dated 9th February 2001 ?

(2) What order and relief ?

Findings.—

Point No. 1 — No.

Point No. 2 — Please see order below.

Reasons

6. Point No. 1.—In the beginning it is necessary to place on record that the 4th Labour Court, Mumbai *vide* its order dated 10th December 1996 recorded finding on Issue No. 1 that the enquiry held against the Applicant was fair and proper and it seems that the said order has not been challenged.

7. Now I have to see whether the Appellant has made out a case for setting aside the impugned order of dismissal passed by the 4th Labour Court, Mumbai on the basis of the material available before this Court. Record reveals that the Appellant was on duty on 9th June 1994 and at about 8.40 p. m. he was driving the Bus and proceeding from Deonar to Wadala. The accident in question took place at C. Gidwani Marg near Gandhi Market. The bus was proceeding from east to west in the middle of the road and at the relevant time one cyclist (student) was already proceeding in the same direction. The left side middle portion of the bus dashed the cyclist and he fell down and was dragged to about 15-20 feet on the road, which resulted in injury to the left side of the head and ear. There was a profused bleeding and the said cyclist succumbed to injury on the spot.

8. Now the main contention of Mr. Kishore Deshpande, Ld. Representative for the Appellant is that the road on which the accident took place is a cement road and on both the sides of the road there is a Kaccha road and as per his submission the cyclist came on the cement road while the bus was passing from east to west and his cycle dashed the bus and he fell down and sustained injury. Mr. Deshpande further stressed that at the relevant time there was a slight raining and the wipers were not working and therefore the Bus driver could not visualise the vehicle coming by the side of the Bus. According to Mr. Deshpande, in fact there is a negligence on the part of the cyclist and not by the bus driver. Mr. Deshpande also

canvassed that the bus was in a slow speed and visuality because of the rain was also poor and hence the Enquiry Officer has not properly appreciated the said fact and circumstances and particularly the immediate statement made by the Bus Driver after the occurence of the accident. In support of his submission, he invited my attention to the statement made by one of the eye-witness Mr. Kishore Bhagwandas Mirg who has lodged the F. I. R. in the Police Station and thereby Mr. Deshpande pointed out that the Enquiry Officer has wrongly accepted the evidence of the said day-witness Mr. Kishore Bhagwandas Mirg and stressed that even the Appellate Authorities have committed error while rejecting the Appeals and also the Labour Court has not considered the evidence recorded during the course of enquiry properly and thereby stressed for setting aside the impugned order passed by the Labour Court.

9. It is significant to note that the incident in question, as detailed above, took place at about 8.40 p. m. on 9th June 1994 on C. Gidwani Marg. There is a sketch map of the place of accident and it shows that there is a cement road of 40 feet width and on both the sides of the said road there is a kacha rasta. The driver was driving the bus in the middle of the cement road and the cyclist also was passing in the middle of the road *i. e.* by the left side of the bus and both the vehicles were proceeding from east to west. In the light of the aforesaid position, now one has to see the evidence of the eye-witness Mr. Kishore Bhagwandas Mirg who has also lodged the FIR to the Police Station. The said witness has depicted the entire picture before the Enquiry Officer and it indicates that the bus driven by the Driver was in a speed and that too in the middle of the road. He has specifically stated that the cyclist was coming in a slow speed, and at the relevant time it was raining slowly. The said witness has further deposed that the Bus Driver had not given horn to the cyclist and the wipers of the said Bus were not in motion. According to this witness, Bus speedily dashed the cyclist and dragged him for about 10-15 feet and also the said cyclist sustained serious injury to his head and there was a bleeding. It is important to note that the said witness has claimed that the said accident took place in front of his house and while he was standing there. Thereafter the Police Van came and the dead body of the cyclist was carried to Chembur Police Station, where this eye-witness Shri Kishore Bhagwandas Mirg lodged the FIR.

10. On going through the cross-examination of the said witness, I don't find that anything is revealed supporting the Bus Driver and the Enquiry Officer has in his report rightly appreciated the version of the eye-witness and came to a right conclusion that because of the rash driving of the Applicant, the accident in question took place and the cyclist died on the spot.

11. I am aware that much was canvassed by Mr. Kishore Deshpande that at the relevant time it was slightly raining and wipers of the bus were not working and therefore the Driver could not see as to whether any vehicle is coming by the sides of the bus, from the backside. The said submission of Mr. Deshpande cannot be accepted for the reason that on both the sides of the bus, there are small side mirrors and the Driver can easily see from the right and left side of these mirrors as to how the vehicles are coming from the backside. Thus merely the wipers were not working, cannot be said to be a reasonable and proper cause shown by the Bus Driver. The Labour Judge has made observation on this point that the Driver has not stated that he could not see the road properly in his statement and further observation is made that if the wipers were not working and it was raining, it was the duty of the Driver to drive the bus at a slow speed, by taking due care. In the instant case, it shows that even after the dash to the cyclist, the bus dragged him to about 10-15 feet and thereafter the bus halted at the distance of about 30-35 feet. If the bus was driven at a moderate speed, it would have come to a stand still immediately after dashing the cyclist and could not have proceeded further for about 30-35 feet. It is, therefore, the submission of Mr. Kishore Deshpande that the bus was in a slow speed cannot be accepted. The evidence of the eye-witness Mr. Kishore Bhagwandas Mirg indicates that there was no any fault on the part of the cyclist, but the accident occured only because of the fact that the bus was driven by the driver in the middle of the road and that too at a high speed and it shows the rashness on the part of the Bus Driver.

12. The another contention of Mr. Kishore Deshpande, Ld. Representative for the Appellant was that if the cyclist was dragged for about 10-15 feet after the dash, then in that case, there should have been abrasion and other injury on the body of the deceased and there should have been marks to that effect on the road. The said submission cannot be accepted for the reason that the cyclist sustained the injury on the left side of the head and ear and there was a bleeding. It is not expected that in such case there should have been other injuries on the body because it depends upon the nature of accident and in the present case, when there was a slight rain, the question of mark on the road does not arise. The Enquiry Officer has in his report considered all the facts involved in the departmental enquiry and on the basis of the evidence and material available before him rightly came to the conclusion that the charge under S. O. 20(j) has been squarely proved against the delinquent Bus Driver. In view of this, on carefully scrutinising the evidence and the record and the reasoning and finding given by the Labour Court, I don't find that there is any error committed by the Enquiry Officer or the Labour Court. Hence, it is difficult for this Court to accept the submissions advanced by Mr. Kishore Deshpande.

13. Now I have to see regarding the past record of the delinquent employee and whether the punishment of dismissal is shockingly disproportionate. Record reveals that the Bus Driver though joined on 29th August 1981, but his service record is not satisfactory. On persual of the same, it indicates that he was punished many times for various misconducts, such as driving the bus at high speed and reaching on the stop before time, non-stopping of bus on the bus stop, committing accidents. He was punished for six times for misconduct of not stopping the bus on the bus stop. He was given warning and suspended for bad habits of driving for 4 times, on 7 times it was reported that he brought the bus before scheduled time and for this act also he was given warning and suspended. Record further reveals that during the summary trial on 2 occasions, he was suspended. It is also to be noted that for accident and collision on 4 occasions he was charge-sheeted and punished three times. Again for rash and negligent driving he was punished. He was also punished for 6 misconducts by giving warning and stopping his increments, etc. In short, the past record is not satisfactory and there are several punishments to his credit.

14. Mr. K. R. Deshpande, during the course of his argument pointed out that the past record of the Appellant was not shown to him or brought to his notice while conducting the departmental enquiry and therefore no appropriate opportunity was given to the Applicant by the Enquiry Officer. I don't find any weight in the said submission for a simple reason that the departmental enquiries and the punishments imposed, referred to above, were not *ex-parte* and the same have been reflected in the service record. Meaning thereby whatever punishments of censure, suspension, etc. were imposed, it was presumed to the knowledge of the delinquent. In view of this position, I don't find that the Appellant was not aware of the same while conducting the departmental enquiry and imposing the punishment by the Enquiry Officer.

15. On the contrary, Mr. Dhobale, Ld. Advocate for the Respondent supported the judgement of the Labour Court and pointed out from the record and the sketch, referred earlier, that the bus driver was driving the bus speedily and with rashness and therefore the accident took place, whereby a school-going boy had succumbed to the injury. In support of his submission he invited my attention to the judgment referred by the Labour Court, which is reported in *1996 FLR page 1855* (The B. E. S. T. Workers' Union, Bombay *V/s.* The General Manager, The B. E. S. T. Undertaking, Bombay). On going through the said case, it indicates that there was also a question for consideration of dismissal of the Driver who was chargesheeted under S. O. 20(j). It indicates that the accident occured because the delinquent employee *i. e.* Bus Driver had failed to keep some distance between his bus and another bus- Dismissal made after a lengthy enquiry conducted- There was no perversity in reasoning of Trying Officer. In short span of less than two years, he had five accidents to his credit. All of which were cases of collision- No interference required with the order of dismissal. Mr. Dhobale also invited my attention to an unreported judgment dated 13th November 1987 in Appeal No. 1179/84 (B.E.S.T. Undertaking *V/s.* M. S. Apte, President & 2 ors.) delivered by the Hon'ble Division Bench of the Bombay High Court. Thus relying on the aforesaid cases, Mr. Dhobale requested that the impugned order passed by the Labour Court, being passed on the facts, record and the legal position, the same be not disturbed.

16. As detailed above, I don't find that the Appellant has made out any exception to set aside the order of dismissal passed by the Enquiry Officer and confirmed by the two Appellate Authorities and also by the Labour Court. On carefully and critically examining the facts and the record of the Enquiry Officer and the impugned judgment of the Labour Court, I don't find that the same is erroneous, which requires the interference of the Industrial Court U/s. 84 of the B.I.R. Act, 1946. In view of the aforesaid position, I answer the Point No. 1 in the *Negative.*

17. *Point No. 2.*—In view of the foregoing reasons and finding on Point No.1, I pass the following Order :—

Order

Appeal (IC) No. 105 of 2001 is dismissed. R & P be sent back.

No order as to cost.

U. R. PATIL,
President,
Industrial Court, Maharashtra, Mumbai.

Mumbai,
Dated the 18th June 2002.

K. G. SATHE,
Registrar,
Industrial Court, Mumbai.
Dated the 21st June 2002.

IN THE INDUSTRIAL COURT, MAHARASHTRA AT MUMBAI

BEFORE SHRI U. R. PATIL, PRESIDENT

REVISION APPLICATION (ULP) No. 201 OF 2001.—(1) M/s. Oshiwara Tarapore Towers Co-op. Hsg. Society Ltd., Army Complex, Phase No. II, New Link Road, Oshiwara, Andheri (W.), Mumbai 400 053, (2) Mrs. Meruna Choudhary, Flat No. M-399, M/s. Oshiwara Tarapore Towers Co-op. Hsg. Society Ltd., (3) Mrs. Shail Sirohi, Flat No. M-381, M/s. Oshiwara Tarapore Towers Co-op. Hsg. Society Ltd., (4) Shri R. Rushtamji, Flat No. M-492, M/s. Oshiwara Tarapore Towers Co-op. Hsg. Society Ltd., (5) Mrs. Satvant Saroye, Flat No. M-493, M/s. Oshiwara Tarapore Towers Co-op. Hsg. Society Ltd.—*Applicant—Versus*—Shri Narayan Gupta, Fakir Wadi, New Link Road, Behram Baug, Jogeshwari (W.), Mumbai 400 102.—*Respondent.* AND REVISION APPLICATION (ULP) No. 202 OF 2001.—M/s. Oshiwara Tarapore Towers Co-op. Hsg. Society Ltd. & 4 Ors.—*Applicants—Versus*—Shri Ramlal Kanojia, Mahesh Apts. Co-op. Hsg Soc. Ltd., Near Satyanarayan Mandir, Kharigaon, Thane 401 105.—*Respondent.* REVISION APPLICATION (ULP) No. 215 OF 2001.—M/s. Oshiwara Tarapore Towers Co-op. Hsg. Society Ltd. & 4 Ors.—*Applicants—Versus*—Shri Anant Saraswati, Laluji Salve Nagar, R. No. 19, MIDC, Road No. 19, Andheri (E.), Mumbai 400 053.—*Respondent.*

In the matter of of Revision Applications U/s. 44 of the M.R.T.U. & P.U.L.P. Act, read with Section 43(*2*).

CORAM.— Shri U. R. Patil, President.

Appearances.— Shri B. K. Ashok, Ld. Advocate for the Applicants.

Shri R. V. Sankpal, Ld. Advocate for the Respondent workmen.

Common Oral Judgement

(Dated the 20th June 2002)

Revision Application (ULP) Nos. 201/2001, 202/2001 and 215/2001 are preferred by the applicants herein feeling aggrieved of the order of issuance of process dated 6th July 2000, 6th July 2000 and 7th February 2000 passed by 9th Labour Court, 5th Labour Court and 7th Labour Court respectively in respect of non-complaince of the interim order passed by the Labour Court dated 24th May 2000. in Complaint (ULP) No. 746/1999.

2. All the three Revision Applications are arising out of the orders passed by the Labour Courts regarding the issuance of process for disobedience of the order of the Labour Court, detailed above and therefore a common question of fact and law arises and hence the same are disposed of by way of common judgment.

3. The brief facts giving rise to the case may be stated as follows :—

Record reveals that Original Complaint (ULP) No. 746/99 was filed by the three Complainants who are the Respondents in the Revision Applications against the Applicant M/s. Oshiwara Tarapore Towers Co-op. Hsg. Society Ltd. for reinstatement with full backwages and continuity of service. It shows that in the said Complaint Application Exh. U-2 was taken out and the Ld. Labour Court initially by passing an *ad-interim* order dated 6th December 1999 and thereafter confirming the same by order dated 24th May 2000 granted the relief directing the Applicant herein to take the Original Complainants in their employment, etc. It is alleged that the notice of the Advocate of the Complainants was sent on 15th June 2000 and the said notice was received by the Opponent Society, Chairman and the Secretary. According to the Complainants, they reported for work on 17th June 2000, but it is contended that the Accused Nos. 2 to 6 in the Misc. Criminal Complaints threatened them of danger to their lives. The said Complainants

also tried to see the General Secretary, President, etc. but the Accused Nos. 2 to 6 did not allow them to meet. Therefore, it appears that the Complainants *viz.* Mr. Narayan Gupta filed Misc. Criminal Complaint (ULP) No. 230/2000, Mr. Ramlal Kanojia filed Misc. Criminal Complaint (ULP) No. 231/2000 and Mr. Anand Saraswati filed Misc. Criminal Complaint (ULP) No. 29/2000 U/s. 48(*1*) of the M.R.T.U. & P.U.L.P. Act. The Labour Courts, referred to above, issued the process against the Applicants herein on the respective dates and feeling aggrieved of the said orders of issuance of process, the Applicants herein by filing the Revision Applications challenged the same on various grounds mentioned in the Memo of Revision Applications.

4. I have called for the record and proceedings and gone through the same. Heard Mr. B. K. Ashok, Ld. Advocate for the Applicants and Mr. R. V. Sankpal, Ld. Advocate for the Respondents. The following points arise for my determination with my findings thereon, as below :—

Points.—

(1) Whether Revision Application (ULP) Nos. 201/2001, 202/2001 and 215/2001 are to be allowed by setting aside the orders of issuance of process dated 6th July 2000, 6th July 2000 and 7th February 2000 passed by 9th Labour Court, 5th Labour Court and 7th Labour Court, Mumbai in Misc. Criminal Complaint (ULP) Nos. 230/2000, 231/2000 and 29/2000 respectively ?

(2) What order and relief ?

Findings.—

Point No. 1 :—No.

Point No. 2 :—Please see order below.

Reasons

5. *Point No. 1.*—It is seen that Originally Complaint (ULP) No. 746/1999 has been filed on 4th December 1999 by the 3 Complainants *viz.* Mr. Narayan Gupta, Mr. Ramlal Kanojia and Mr. Anand Saraswati and in the said complaint, they have alleged unfair labour practices on the part of the Applicants herein and prayed for reinstatement with continuity of service and full backwages. Record further indicates that therein application Exh. U-2 for interim relief was taken out and the Labour Court initially granted *ad-interim* injunction on 6th December 1999 and the said order has been confirmed on 24th May 2000, thereby the Applicants herein were directed to allow the Complainants to report for duties, etc. It is the grievance of the Original Complainants that despite the said order, the Applicants herein did not allow them to resume their duties and therefore there is a disobedience of the order passed by the Labour Court and hence three different Criminal Complaints have been filed in the respective Labour Courts, detailed above. The respective Labour Courts issued the process against the Applicants herein *vide* the order, detailed above.

6. Now, the main contention and grievance of Mr. B. K. Ashok, Ld. Advocate for the Applicant is that the Original Complaint has been filed only against M/s. Oshiwara Tarapore Towers Co-op. Hsg. Society Ltd. and the Applicant Nos. 2 to 5 herein were not the parties thereto. Mr. Ashok stressed that in view of this position when the Applicant Nos. 2 to 5 were not a party, then in that case, the Labour Court ought not to have issued the process against them. The another grievance of the Applicants is that they were not aware of the order dated 24th May 2000 passed by the Labour Court and the said order was not served upon them and on this ground alone, the issuance of process is totally illegal. Mr. B. K. Ashok further canvassed that the notice dated 15th June 2000 of the Ld. Advocate for the Original Complainants was

not served upon the Applicants, referred to above, but it was only served upon the Chairman, Secretary and Treasurer of the Society and hence when the said Applicants were not aware of the Court litigation directing the Original Complainants to resume their duties, it was to tally illegal on the part of the Labour Courts to issue the process against the said Applicants. Mr. Ashok also canvassed that the Applicant No. 3 Mrs. Shail Sirohi and Applicant No. 5 Mrs. Satvant Saroye were not the committee members, but ordinary members of the Society and therefore they cannot be held responsible for disobedience of the order of the Labour Court.

7. In support of his submissions, the Applicant's Advocate placed a reliance on a case reported in *1995 I CLR 2000* (Dipak Ray & ors. *V/s.* Mafatlal Engineering Employees Union & ors.). On going through this case, it indicates that there was also a problem for consideration U/s. 30, 38, 41 and 48 of the M.R.T.U. & P.U.L.P. Act. The Respondent had filed complaint U/s. 28 of the Act against the Mafatlal Engineering Industries Ltd. The Petitioners were Executive Director, General Manager and Deputy Personnel Manager respectively of the said Company. They were not impleaded as parties to the complaint. An Interim Order *ex-parte* U/s. 30(*2*) of the Act was obtained in the said complaint. Later on Respondent filed complaint U/s. 38 read with Sec. 48 of the Act impleading the Company as Accused No. 1 and the Petitioners as Accused Nos. 2 to 4 alleging breach of *ex-parte* injunction order. The point was whether the Petitioners were liable to be prosecuted. It has been held that the Petitioners who were not parties to the Original Complaint in which the *ex-parte* interim order, which is alleged to have been breached, was made, cannot be made liable in subsequent proceedings in which the criminal jurisdiction of the Labour Court to try offences under the Act is invoked. He also relied on a case reported in *1998 II CLR 1188* (Ramkrishna Chitnis & ors. *V/s.* State of Maharashtra & ors.). In this case, there was a point for consideration U/s. 48 read with S. 30(*2*) of the M.R.T.U. & P.U.L.P. Act and it has been observed that the complaint of breach can be filed against the person to whom the order is served. Unless it is shown that the persons who have allegedly committed breach of the order, were served with the order and whether were made aware of the order and therefore are said to be made answerable for the wilful disobedience thereof, there cannot be a complaint on the basis of deeming fictions, which is sought to be raised on the basis of they being Directors. He also invited my attention to a case reported in *1995 I CLR 146* [Meena (Kum.) D/o. Suryabhan Bhandakkar *V/s.* S. D. Chacharkar & ors.]. In this case, there was a point for determination under the Contempt of Courts Act, 1971 as to whether there is a wilful disobedience of the order of the School Tribunal to reinstate the Petitioners and pay her backwages. The Respondent No. 4 was Education Officer— Whether he is liable to be proceeded under Contempt of Courts Act. On consideration of the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Regulations Act, 1977, it is clear that the proceedings before the School Tribunal are between the employer and employee, therefore, State Government or Officers are not necessary parties to the proceeding before Tribunal and therefore the order against the State Government or its officers by the School Tribunal would be without jurisdiction. The Respondent No. 4, who is an Education Officer or State Government are not guilty of Contempt of Court. Thus relying on the aforesaid cases, the sum and substance of the grievance and contention of Mr. B. K. Ashok is that the Applicant Nos. 2 to 5 were not party to the Main complaint and hence in the light of the above cases, they be not held liable for disobedience of the order of the Labour Court and therefore the issuance of process by the Labour Courts, as detailed above, is contrary to the facts and legal position.

8. Last point raised by Mr. B. K. Ashok is that as per Section 204(*2*) of the Code of Criminal Procedure, no list of the witnesses has been given by the Complainants and therefore the Labour Courts should not have issued the process against the Applicants herein.

9. On the contrary, Mr. R. V. Sankpal, Ld. Advocate for the Respondent supported the orders of issuance of process issued by the Labour Courts and vehemently argued that despite the order dated 24th May 2000 directing the Respondents i. e. Applicants herein to allow the Complainants to report for duties, but they were not allowed and threatened. He further pointed out the notice dated 15th June 2000 was also given by the Advocate informing about the passing of the order by the Labour Court and to allow the Original Complainants to report for duty. In substance, Mr. Sankpal submitted that it is nothing but a deliberate defiance of the order passed by the Labour. In support of his submission he relied on a case reported in *1997 II CLR 1119* (Rashtriya Mill Mazdoor Sangh *V/s.* Khatau Makanju Spg. & Wvg. Co. Ltd. & Ors.). On going through this case, it indicates that there was a question for consideration regarding the Contempt of Courts Act, 1971 Sec. 2*(d),* S. 12 *(5)* Civil Contempt. The substance indicates that the Hon'ble High Court issued notices to all the Directors of the Company to showcause why they be not dealt with for Civil Comtempt. Each Director throwing blame for non-compliance on others and urged that non-compliance of order does not amount to Civil Contempt but only the order can be executed. It has held that the order passed by the Court on 6th May 1977 is in the nature of command to the Company to pay wages of February, 1997 to its workers by 20th May 1997, the omission or neglect and inaction on the part of Directors lead to an inference that they wilfully disobeyed the order and all the Directors of the Company are therefore guilty of Civil Contempt. Mr. Sankpal also pointed out a judgment reported in *1996 II CLR 725* (Pratapbhai Ramabhai Solanki *V/s.* Divisional Controller, Gujarat State Road Transport Corporation). On going through this case, it indicates that the proceeding for Contempt of Court is a proceeding in personam. The name of an individual person who is alleged to have disobeyed the directions of the Court is required to be given. A Contempt proceeding cannot be proceeded with in the absence of an individual person being a party as contemner. Thus Mr. Sankpal stressed that in the case in hand, the Applicant Nos. 2 to 5 who are the Managing Committee members of the Applicant No. 1 Society, are also responsible for the non-compliance of the order and therefore requested to dismiss the Revision Applications.

10. On carefully considering the facts and circumstances of the case in hand, I am aware that originally the complaint was filed by the Complainants against M/s. Oshiwara Tarapore Towers Co-op. Hsg. Society Ltd. There is no dispute that the Labour Court passed order below Exh. U-2 on 24th May 2000 and thereby directed the Applicant Society to allow the Complainants to resume duties and it is the contention of the Complainants that despite their repeated efforts, they were not allowed to resume the duties. It is significant to note that M/s. Oshiwara Tarapore Towers Co-op. Hsg. Society Ltd. is formed by its members and the day-to-day affairs in respect of the Society including the employees, Accounts, etc. are to be managed by its Managing Committee/Members and without such Management, the Society cannot run. It is further to be noted that the Complainants have filed the complaint referred to above and thereby challenged the unfair labour practices and seeking the reliefs mentioned therein. In the said complaint, Written Statement has been filed and now it has reached the stage of arguments before the Labour Court. Meaning thereby, in regard to Court litigation, how to file the Defence and engage an Advocate, the Members of the Society must have to pass a resolution to that effect. Under the said circumstances, it cannot be said that the Society and its members were unaware of such litigation. I am aware that during the course of arguments Mr. B. K. Ashok canvassed that there was change in the Managing Committee and after the incident, fresh Managing Committee has come, Though there is a change in the Managing Committee, the point remains that it was for the Society to respect the order dated 24th May 2000 passed by the Labour Court. It is significant to note that the Society *viz.* M/s. Oshiwara Tarapore Towers Co-op. Hsg. Society Ltd. is a legal entity and not an individual and therefore the member of the Society or the Managing Committee have to see the day-to-day affairs and it is for them to implement the order passed by the Labour Court, otherwise the Society only will not be in a position to implement the order passed by the Labour Court, and the order passed by the Labour Court will be only on paper.

11. I am aware of the cases relied by Mr. B. K. Ashok, Ld. Advocate for the Applicants and particularly the case reported in *1995 I CLR 200,* but with due respect the facts involved in the said cases cannot be totally made applicable to the case in hand because in the present case the litigation between the Complainants on the one hand and the Society on the other hand was going on and the Interim Order below Exh. U-2 dated 24th May 2000 was passed by the Labour Court and it was for the Members of the Society or the Managing Committee to implement the same. The Applicants cannot claim excuse simply on the ground that the Applicant Nos. 2 to 5 were not aware of the Court proceedings and that the order of the Labour Court was not served on them. In view of this position, the Applicants herein are at liberty to lead oral and documentary evidence before the Labour Courts to show that they were not members of the Managing Committee and also being only the members of the Society were not aware of the Order passed by the Labour Court and were not responsible to comply the same. In view of this position, it is rather difficult to accept the submission of Mr. B. K. Ashok.

12. It is also necessary to place on record that at the time of arguments, Mr. Ashok pointed out that the Labour Court committed error while issuing the process because as per sec. 204(*2*) of the Code of Criminal Procedure, when no list of prosecution witnesses has been filed, the Labour Court should not have issued the process against the Accused, the same being a mandatory provision. On perusing the record and proceedings, it indicates that before issuing the process, the Labour Courts have recorded the verification and on satisfying itself, issued the process against the Applicants herein. It is also significant to note that as per Chapter VII pertains to trial of Offences under sections 38, 41, 47 and 49, Rule 80 of the Labour Courts (Practice and Procedure) Rules, 1975 lays down that "complaint should be presented to the Court which shall follow the procedure under sections 200 and 202 of the Criminal Procedure Code, 1974. Here in the present case, the Court as mentioned above, followed the same by recording the verification and on satisfaction thereto, the Courts have issued the process in the said capacity. Hence at this point I don't find that the points raised by Mr. B. K. Ashok alongwith the citations, detailed above, are to be considered. It is because it is open to the Applicants to lead appropriate and relevant evidence before the Labour Courts and thereby to defend the Criminal Complaints and get the appropriate reliefs. Thus, as discussed above, I answer the Point No. 1 in the *Negative.*

13. *Point No. 2.*—In view of the foregoing discussion and finding on Point No. 1, the aforesaid Revision Applications seem to be devoid of merits and hence I proceed to pass the following Order :—

Order

Revision Application (ULP) No. 201/2001, 202/2001 and 215/2001 are dismissed.

No order as to cost.

U. R. PATIL,
President,
Industrial Court, Maharashtra, Mumbai.

Mumbai,
dated the 20th June 2002.

K. G. SATHE,
Registrar,
Industrial Court, Mumbai,
dated the 27th June 2002.

IN THE INDUSTRIAL COURT, MAHARASHTRA AT MUMBAI

BEFORE SHRI P. V. ROTHE, MEMBER

COMPLAINT (ULP) No. 688 OF 1994.—The Co-operative Bank Employees Union, Upendra Nagar, Senapati Bapat Marg, Dadar, Bombay 400 028.—*Complainant.*—*Versus*—Kolhapur Zilha Janata Sahakari Bank Ltd., 217, Ambavan Bhavan, Curry Read, Bombay 400 013; M Liquidator for Kolhapur Zilha Janata Sahakari Bank Ltd., Bombay.—*Respondents.*

CORAM.— Shri V. P. Rothe, Member.

Appearances.— Shri S. A. Sawant, Advocate for Complainant;
Shri Mahamulkar, Advocate for Respondents.

Oral Judgement

(Delivered on 2nd July 2002)

1. This complaint has been filed by Co-operative Bank Employees Union against the Respondent i. e. Kolhapur Zilha Sahakari Bank Ltd. and others. It is filed under items 9 and 10 of Schedule IV of M.R.T.U. & P.U.L.P. Act.

2. It is contended by the Complainant that it represents the workmen employed by the Respondent No. 1 Bank. The Complainant is a representative and approved union under B. I. R. Act, 1946. The Respondent No. 1 Bank is constituted under the Co-operative Act and under the control of Reserve Bank of India.

3. It is alleged that the Respondents have engaged in the unfair labour practices under items 9 and 10 of Schedule IV of M.R.T.U. & P.U.L.P. Act. On account of mismanagement of the Respondent No. 1 Bank and the Board of Administrators (now Liquidator), the employees are suffering. The service conditions of the employees are governed by the settlement dated 18th April 1992. This settlement was for the period 1st April 1991 to 30th September 1994. The employees of the Respondent No. 1 Bank were getting their salaries/wages on 28th of respective month. On 22nd June 1994, the letter was issued by the Respondent to the Branch Manager of the Bank and it was informed that the existing service conditions of their employees are to be curtailed. It was proposed to grant only 75% of the salaries or wages of the employees to them. It was further informed that yearly increment should not be given to the Bank employees in future. The medical allowance which is already paid to the employees as per the above referred settlement proposed to be recovered from them in one instalment. It is contended by the Complainant that these acts on the part of the Respondent No. 1 Bank in modifying the existing service conditions are patently illegal acts. These proposed changes are without issuance of any notice. All these acts are amounting to unfair labour practices under items 9 and 10 of Schedule IV of the Act. Hence, it is prayed that the declaration may be granted accordingly and the Respondent be directed to give yearly increment to its employees. It be directed not to deduct the medical allowance already paid to them and to pay their salaries/wages as per the existing settlement.

4. When this complaint was filed by the Complainant, the Bank was functioning. Subsequently, it went in to liquidation and the Liquidator came to be appointed.

5. Only person who is prosecuting this complaint, Shri S. K. Sutar whose services came to be terminated by the Liquidator in the year 1999. Out of 107 employees working with the Respondent Bank, most of the employees have tendered their resignations periodically. Now Shri S. K. Sutar is the only person whose services came to be terminated by the order of the Liquidator passed on 1st January 1999. It is prayed by the Complainant that he may be allowed to work in the Bank till the liquidation proceeding is completed and salary may be given to him accordingly.

6. In the written statement of Exh. C-3, the Respondent Bank has submitted that the huge amount of loan was advanced by the Bank to its customers. It could not be recovered its loan from the customers and the proceeding of the recovery of the said loan is in progress. Due to the financial difficulties, the Bank could not make the statutory payments. The employees involved in this complaint are fully responsible for this state of affairs of the Bank. The services of 5 such employees were terminated by loss of confidence. This termination came to be challenged before the Labour Court and it was directed to Bank to deposit the salaries of the employees

by the Labour Court, Mumbai. It is the intention of the Respondent to restart the day to day functioning of the Bank. The employees are only interested in their salaries and not in the revival of the Bank. They are not understanding the fact that the Bank went in liquidation. The employees have filed this complaint instead of filing the application under B. I. R. Act. The action on the part of the management cannot be said to be breach of the settlement. Since the circumstances are beyond their control, the management was required to effect proposed changes. Thus, the present complaint is not maintainable and the Complainants are not entitled for any order.

7. In the course of time, the Liquidator was added as a necessary party in this proceeding as per the order passed on Exh. U-17. The Liquidator is placed as a party in place of Board of Administrator.

8. Following are the issues framed by my learned prodecessor as per Exh. O-10 :—

Issues	*Findings*
(1) Whether the Complainant proves that the Respondents are guilty for committing unfair labour practices under items 9 and 10 of Schedule IV of the M.R.T.U. & P.U.L.P. Act ?	Negative
(2) Whether the complaint is maintainable ?	Affirmative
(3) What order ?	As per final Order.

Reasons

9. *Issue No. 1.*—The Complainant has examined himself at Exh. UW-1 and deposed that since 24th April 1986, the Complainant was working as a Clerk in the Respondent Bank. The Bank was taken over by Liquidator on 20th October 1997. There were 90 employees in the Bank when it went into liquidation. 77 employees of the Bank have tendered their resignations. Thereafter, 12 persons tendered their resignations in December, 1998 and only the Complainant was left out. When Shri Sutar (Exh. U-1) went to the Liquidator with the order passed by this Court on Exh. U-14, the Liquidator had refused to give him the work. In the cross-examination, it is admitted by Shri Sutar that on the condition of exempting of their housing loan, the employees of the Bank have tendered their resignations. It is further admitted by Shri Sutar that none of the housing loan has been write of by the Bank and none of the employees who have tendered the resignations had been exempted from the payment of housing loan. It is admitted by Shri Sutar that his services came to be terminated from 1st January 1999.

10. In the oral evidence of Exh. CW-1 and Exh. CW-2, it has come on record that now the Bank activities are restricted to the recovery of the dues. In the cross-examination of Exh. CW-1, it is admitted that the work of distribution of the deposit insurance scheme was in progress. On 1st January 1999, the amount of Rs. 7.5 crores was to be disbursed under this scheme. Now, 5 persons are working in the Bank for clearing all the pending work. Their services are on contract basis. Exh. CW-2 Shri Suresh has deposed that housing loan amount was not exempted by the Liquidator in case of the employees who have resigned from the Bank. In his cross-examination, Exh. CW-2 witness has admitted the Memorandum of Understanding that there is no settlement in between Shri Sutar and the Liquidator.

11. The Learned Counsel of the Complainant Shri Sawant has argued that as per the settlement of Exh. 'B' the service conditions of the employees of the Bank are governed, however, after the liquidation of the Bank these issues of deduction of wages and return of medical allowance not survived. Though as per the terms of the settlement, there was no such condition of deduction of 25% wages. Now, the question that is survived whether the Liquidator can terminate the services of the sole employee i. e. Shri Sutar. It is submitted by Shri Sawant Advocate that the Liquidator has got no such power and the services of the Complainant are required to be continued till the Bank functions. As per the evidence, that the work is in existence and hence, the Liquidator cannot terminate the services of the Complainant. It is fairly conceded by Shri Sawant Advocate that stepping in the shoes of the Board of Administrator the Liquidator can function. It is very clear from the record that the Liquidator has been

appointed to take necessary steps regarding the assets and liabilities of the Bank. The Liquidator is certainly not there to burden the Bank with the liabilities. It has come on record that the work of disbursement was taken place with the help of ex-employees of the Bank on availing their service on contract basis. On par with that the Complainant was allowed to work there. However, it is seen that the Complainant had refused to do the work on the same terms. Learned Counsel of the Complainant though challenging the termination of the services of the Complainant, I find that this Court is not the forum for agitating that question. The Complainant can take the necessary steps to challenge this act of liquidator before the appropriate forum.

12. It is argued by the Learned Counsel of the Respondent that this Court has got no jurisdiction to try this complaint in view of the provisions of section 102 of the Maharashtra Co-operative Sociectes Act, 1960. The present complaint is of unfair labour practice. This Court which can go into that question. This complaint was filed for the limited purpose and that purpose is infractuous in view of the liquidation of the Bank. So far as Shri Sutar is concerned, he is entitled to get the reliefs on par with the other employees who have resigned from the Bank. There is no question of reinstating the services of the Complainant as the Bank is in liquidation and whatever work that has been left out, is being carried out through the employees appointed on contract basis.

13. The present complaint thus, can given the certain reliefs to the sole employee *i.e.* Shri Sutar. These reliefs are his wages till the date of his termination order *i.e.* 1st January 1999. The wages and other benefits for which Shri Sutar is entitled till the termination of his service and Shri Sutar can be employed by the Bank on contract basis on par with the other employees who are presently working with the Bank and on par with the same conditions of those employees, the Complainant can get the work and remuneration on the same terms of contract. Thus, the unfair labour practice as such is not proved by the Complainant. Hence, I answer issue No. 1 in the negative.

14. *Point No. 2.*—This issue is pertaining to the maintainability of the complaint. This complaint is maintainable as it is a complaint of unfair labour practice. Though the complaint was filed in the year 1994, it became redundant in 2002 on account of certain developments in the intermittent period. As per the prayer clause of the complaint, para 9(*j*), the Complainant had asked for any other relief as the nature and circumstances of the case may require, be granted. Without recording any finding of the unfair labour practice, this relief can be granted to the Complainant. Hence, I find that this complaint is maintainable and pass the following order :—

Order

(*i*) The complaint is partly allowed.

(*ii*) Shri S. K. Sutar whose services are terminated on 1st Jaunary 1999 is entitled to get the wages and terminal benefits of his service. Shri Sutar is also entitled to get the work on contract basis from the Bank as per the order passed on Exh. U-14.

No order as to costs.

V. P. ROTHE,
Member,
Industrial Court, Mumbai.

Mumbai,
Dated the 2nd July 2002.

K. G. SATHE
Registrar,
Industrial Court, Mumbai.
Dated the 8th July 2002.

———————

IN THE INDUSTRIAL COURT, AT MUMBAI

REVISION APPLICATION (ULP) No. 204 of 2001 IN COMPLAINT (ULP) No. 594 of 1996.— Yesumitra Sabanna, Municipal Old X Chawl, Chawl No. 575/2, Room No. 3, Dharavi, Mumbai 400 017—*Applicant Versus* (1) The Chief Manager, Central Railway Employees Co-op. Credit Society Limited, 65-A, N. M. Joshi Marg, Near Byculla Railway Station, Platform No. 1, Mumbai 400 027; (2) The Chairman, Central Railway Employees Co-op. Credit Society Limited, C/o. Financial Advisor & Chief Accounts Officer, Central Railway, Mumbai CST, Near Platform No. 1, Mumbai—*Respondents.*

In the matter of revision application under Sec. 44 of the M.R.T.U. and P.U.L.P. Act, 1971 against the Order dated 3rd August 2001 passed by Third Labour Court, Mumbai, in Complaint (ULP) No. 594 of 1996.

Present.— Shri M. L. Harpale, Member, Industrial Court, Mumbai.

Appearances.— The Applicant present in person.

Shri Sunil Shroff, Advocate for the Respondents.

Judgement and Order

1. The present Applicant was the Complainant in Complaint (ULP) No. 594 of 1996 filed against the present Opponents *i.e.* The Chief Manager, and the Chairman of the Central Railway Employees Co-operative Credit Society Limited in the Labour Court, Mumbai, under sec. 28 and 30 read with item 1(*a*), (*b*), (*c*), (*d*), (*e*), (*f*) and (*g*) of the Sch. IV of the M.R.T.U. and P.U.L.P. Act, 1971 (Hereinafter the Applicant is referred to as the Complainant employee and the Society is referred to as the Respondent Society.).

2. The Complainant employee had approached the Labour Court with the following facts :—

He was working in the Respondent Society from 15th July 1987 as a Clerk, Prior to his joining, there was settlement dated 17th August 1976 between the Respondent Society and then Union functioning in the Respondent Society. After joining the Respondent Society *i.e.* from 7th October 1987, he was requesting the Respondent Society for his transfer from Bhusawal to Mumbai as per Clause Nos. 6 and 7 in the above settlement. In the year 1991, the Respondent Society transferred the employees, who were juniors to him to Mumbai, but his request was not considered. He, therefore, filed a complaint being Complaint (ULP) No. 60 of 1992. On the decision in the said complaint, he filed a Writ Petition No. 4176/1993 and then Civil Application No. 2094/1994 in the said writ petition. Their Lordships passed order that the said application would be decided alongwith the said writ petition. It is further contended that during pendency of the proceedings, the Respondent Society transferred him from Bhusawal to Jhasi *vide* transfer order dated 25th July 1994. On the said transfer order, he filed second complaint being Complaint (ULP) No. 796/1994 before the Industrial Court, Mumbai. That Court, however, refused to grant him any interim relief. On the said order, he preferred a writ being Writ Petition No. 2044/ 1994. Lastly, the said Writ petition came to be dismissed. On the said decision, he filed an Appeal No. 911/1994 before the Hon'ble Division Bench. That appeal also came to be dismissed, on 28th February 1995. It is further contended that meanwhile the Respondent Society again transferred one employee from Solapur to Mumbai and, therefore, he filed Civil application in the former pending writ petition and the Respondent society was directed therein to accommodate him at Mumbai. Accordingly, he was allowed to resume his duties with effect from 17th July 1995. It is further contended that due to the various litigation, the Respondents decided to teach him a lesson. Then, they issued chargesheet dated 15th January 1996 and thereby alleged false charges of misconduct against him. However, he was not supplied other details required to be supplied alongwith the chargesheet. He was also not allowed to inspect or furnish the relevant documents. He, therefore, could not give his reply to the said chargesheet. It is further contended that the Respondent Society had appointed one Mr. Nivsarkar as Enquiry Officer, who acted in bias manner against him and completed empty formalities and gave findings against him. He was not given full opportunity and completed the enquiry in undue haste

without following the principles of natural justice. It is further contended that on the report of the Enquiry Officer, the Respondents served a show cause notice on him. He asked time to file his say but the Respondents served on him an order of dismissal dated 10th June 1996 on him. On the decision of the dismissal, he preferred and appeal before the Appellate Authority, who set aside the dismissal and remanded matter back to the Disciplinary Authority. The Disciplinary Authority then failed to comply with the modified rules/regulations. He therefore, filed a third complaint (ULP) No. 821/1996 before the Industrial Court, Mumbai. The said Industrial Court was pleased to pass order dated 12th August 1996 directing the Respondents to allow him to join his duty. The Respondents were also directed to follow the due procedure of law before awarding any punishment. As per the said order, he was allowed to join, but the Respondents failed to follow the procedure of law and again awarded punishment of dismissal *vide* letter dated 23rd August 1996. Again, he preferred an appeal before the Appellate Authority, but the Appellate Authority failed to consider the issues raised by him and upheld his dismissal. Hence he was required to file the complaint for declaration of unfair labour practices, reinstatement with full back wages and continuity of service.

3. *Vide* Exh. C-18, the Respondents filed their Written Statement and thereby adopted the contents in their say Exh. C-5. Again, they filed their additional Written Statement at Exh. C-32. They denied all the allegations made by the Complainant employee against them and also denied his claim, According to them, on the chargesheet dated 15th January 1996, enquiry was held against the Complainant and the Complainant was held guilty of the charges by the Enquiry Officer. Then, he was issued with show cause notice awarding punishment for the misconduct proved against him. The Complainant submitted his explanation. Then, considering the said explanation, the concerned papers and his past record, the vice Chairman of the Respondent Society directed to award penalty of dismissal from service. Then, the Respondent Society issued a dismissal order dated 23rd Auguat 1996 which was effected from 28th August 1996. Thus, the services of the Complainant came to an end on 28th August 1996. They have further contended that they followed due procedure of law, while conducting the enquiry and dismissing the Complainant preferred an appeal to the Appellate Authority. On going through the personal hearing, the Appellate Authority upheld the said dismissal order. The decision of the same was communicated to the Complainant. After rejection of the appeal by the Appellate Authority, they complied with necessary formalities. Thus, the action of dismissing the Complainant is legal and proper. It is further contended that the contentions and allegations made by the Complainant in respect of non compliance of the Agreement of 1976 and the subsequent litigations taken by the Complainant have no bearing on the present case. Moreover, the said agreement is superceded by the subsequent agreements. They have further contended that in case the Court comes to conclusion that the enquiry against the Complainant was not fair, legal and proper, they be allowed to prove the charges before this Hon'ble Court. They have further contended that they have not committed any unfair labour practices, as alleged. So considering all the facts, the present complaint be dismissed with costs.

4. In this case, the Issues Exh. O-6 came to be framed by the trial Judge. Thereafter the trial Judge recorded evidence in chief of the witness for the Respondents. On considering the said evidence and the arguments advanced by the Learned Advocate for the Respondents, the trial Judge decided the complaint on 3rd August 2001 and thereby dismissed the said complaint with costs of Rs.3,000. The Complainant employee was also directed to refund the entire amount of wages with drawn by him within a period of 2 months from the date of the said judgement/final order.

5. Being aggrieved by the said judgement, findings and final order dated 3rd August 2001, the Complainant employee has preferred this revision application on the grounds as set out in his revision memo.

6. The Complainant employee himself argued his case. On hearing his argument and the arguments advanced by the Learned Advocate for the Respondent, and on considering the material on record, the following points arise for my determination and I have recorded my findings thereon for the reasons stated below :—

Issues	*Findings*
(1) Whether it is necessary to remand the matter back for fresh trial and decision on merits ?	Yes.
(2) If the finding of the above issue is in the negative, whether the trial Judge has rightly decided the issues and passed final order in the complaint ?	Does not arise.
(3) Whether it is necessary to interfere with the findings and final order recorded/passed by the trial Judge ?	Yes.
(4) What Order ?	As per the final order below.

Reasons

7. In this case, there is only evidence in examination in chief of the witness Shri Kamalkant Vishnu Shete examined by the Respondents. The trial Judge has decided the complaint only on the oral evidence in examination-in-chief of the said witness and the argument advanced by the Learned Advocate for the Respondents. In this revision, the Complainant employee has mainly pressed three grounds *viz.* (1) that the trial Judge kept pending the applications Exhs. U-54, U-75 and U-76 without passing any order thereon and fixed the case for further stages ; (2) that the trial Judge framed the back dated issues as the issues were framed on 2nd June 2000 but the trial Judge signed it on 28th June 2001 ; and (3) that the trial Judge deliberately and contrary to the provisions of law and procedure failed to decide the issue of ' perjury '.

8. As regards the first ground, it appears from the application dated 4th January 1999 Exh. U-55 that the Complainant has made this application for deciding the issue of perjury as preliminary issue. In fact, the trial Judge passed order for deciding all the issues, including the issue of perjury together. In the circumstance the Complainant made this application for deciding the issue of perjury as the preliminary issue. In support of his application, he relied on serveral decisions of the Supreme Court and Bombay High Court. On the same day, the Learned Advocate for the Respondents received a copy of the same. But no order came to be passed by the trial Judge on it till 28th June 2001. On perusal of the records, it appears that the trial Judge recorded the evidence of the witness for the Respondents on 1st February 2001 and then the said complaint came to be fixed for evidence of the Complainant till 28th June 2001. From the *Roznama* dated 28th June 2001, it appears that the Learned Advocate for the Respondents filed application Exh. C-47 requesting the Court for closing the evidence of the Complainant employee. The trial Judge allowed the said application and asked both the parties to advance their final arguments and the Learned Advocate for the Respondents completed his arguments. The Complainant employee however filed application Exh. U-91 and insisted the trial Judge to decide the application Exh. U-54. On that day, the trial Court therefore passed order on the application Exh. U-91 and then the Complainant employee left the Court. Thus from the record it appears that the application Exh. U-54 was pending when the matter was fixed for evidence and the Court recorded the evidence of the witness for the Respondents. The order came to be passed on Exh. U-54, when the matter was fixed for final arguments.

9. It further appears from the *Roznama* dated 1st February 2001 that the complaint was fixed for the evidence. On that day, the Complainant employee filed in all two applications *viz.* Exh. U-86 and Exh. U-87. On perusal of the same, it appears that the Complainant filed the applications stating that the applications Exh. U-75 and U-76 were fixed for orders on that day

and also for deciding the preliminary issue of perjury. These facts show that the Complainant employee insisted the Court to decide the application Exh. U-54 and issue of perjury as preliminary issue and also the applications Exh. U-75 and U-76. On the application Exh. U-87, the trial Court passed order as 'seen' only and on the application Exh. U-86, the trial Judge passed order stating that the application Exh. U-75 had decided by his Predecessor and the Application Exh. U-76 was affidavit and rejected the said application.

10. Now, the question arises as to whether the trial Judge has decided the applications Exh. U-75 and U-76. On perusal of both these applications and the record of the Complainant, it does not appear that the application Exh. U-75 and Exh.U-76 had been decided. On the other hand, it appears that the trial Judge has fixed the next date for order below the application Exh. U-75 and accordingly passed order thereon. From these facts, it appears that the application Exh. U-75 was fixed for order, but thereafter no order came to be passed thereon. The application Exh.U-76 is the affidavit and the trial Judge has passed the order thereon as "read and recorded." Thus, it remains that the application Exh. U-75 was not decided and the same was remained pending till the decision of the complaint.

11. The learned Advocate for the Respondents has submitted that the trial Court had disposed of the application as pointed out by the Complainant employee. The order dated 1st February 2001 also shows the same. However it appears that there is no order on record. There is one order dated 2nd January 1999 below the application Exh. U-50 passed by the trial Judge. In the said order, the trial Judge decided to dispose of the pending applications filed by both the parties alongwith the main matter. But the applications Exh. U-54, U-75 and the affidavit Exh. U-76 came to be filed thereafter. Therefore, it cannot be said that the trial Judge had decided these two applications Exh. 54 and 75. From the above discussions, it appears that there is substance in the contention of the Complainant employee that the applications Exh. U-54 and Exh. U-75 were not decided and he pointed out this fact on the date fixed for the evidence, but the trial Judge proceeded to record the evidence of the witness for the Respondents.

12. So far as the ground of framing of the issues is concerned, the complainant employee has raised the contention that the trial Judge has framed back dated issues. The issues framed at Exh. O-6 are on record. On perusal of it, it appears the date of the issues shown at the left side under the issues is as 2nd June 2000, while the date under the signature of the trial Judge appears to be as 28th June 2001. Thereafter, one more additional issue pertaining to perjury came to be framed on 3rd August 2001. The Roznama dated 2nd June 2000 shows that on that day the Respondents filed draft issues. Therefore the case came to be fixed for recording of evidence. Thereafter on 20th June 2000 the issues are shown to be framed *vide* Exh. O-6. However, the trial Judge signed on the said issues on 28th June 2001 *i. e.* after recording the evidence and that is on the day of the final argument advanced by the learned Advocate for the Respondents. The additional issue was however framed on 3rd August 2001, that is when the case was fixed for final judgement. From all these facts, it appears that there are some irregularities in framing the issues. But it does not appear that the issues, except the issue pertaining to the perjury, came to be framed after the evidence and final arguments and shown the same on previous date. The only thing is that the issue pertaining to the perjury, was framed on the date when the matter was fixed for judgement and on the same day, the trial Judge delivered and pronounced his final judgement in the complaint. Thus, no opportunity was given to both the parties to lead their evidence on the issue subsequently framed by the trial Judge.

13. So far as the third ground as raised by the Complainant employee is concerned, it appears that the Complainant employee raised issue of perjury and insisted to decide the same as preliminary issue. Thereafter, the trial Judge decided to hear all the issues together. However, the Complainant employee again filed application for deciding the issue of perjury as the preliminary issue by making application Exh. U-54. But the said application remained to be decided by the trial Court. However, it cannot be said that the trial Court deliberately avoided to decide the said application without any sufficient reason.

14. From the above discussions, it appears that there is substance in the contention of the Complainant employee that the applications Exh. U-54 and Exh. U-75 were pending for decision, when the case was fixed for evidence. It further appears that the Complainant employee insisted for passing necessary orders thereon prior to the evidence, on the day of the evidence of the witness for the Respondents and also after the evidence. This may be the reason for the Complainant employee for not making himself available for evidence and refusal to advance his arguments. It was necessary on the part of the trial Judge to pass necessary orders below the applications Exh. U-54 and U-75 or to verify as to whether these applications were really decided or not. The Complainant employee was insisting again and again for disposing and passing orders on these 2 applications *viz.* Exh. U-54 and U-75. But the trial Judge has not disposed of these 2 applications or confirmed the decision, if any thereon and pending the applications proceeded further to reocrd the evidence.

15. Since there is substance in the contention/submission of the Complainant employee that the applications Exh. U-54 and U-75 were pending for decision, it is necessary to remand the complaint back to the Labour Court for deciding the said applications. Here, I must make it clear that the application Exh. U-76 is the affidavit and which is marked as read and recorded by the trial Judge. It is, therefore, not necessary to pass any order thereon. Secondly, it is filed in support of the application Exh. U-75 filed by the Complainant employee.

16. As discussed above, the trial Judge has decided the matter only on the oral evidence in examination-in-chief of Shri. Kamalkant Vishnu Shete examined by the Respondents. There is no evidence of the Complainant or his witnesses. Secondly, the evidence of the witness for the Respondents is not cross-examined, Therefore, it is also necessary to give opportunity to the Complainant employee to produce his witness and to cross examine the witness for the Respondents. The Respondents should have also given opportunity to examine any other witness/ witnesses if any.

17. The Complainant employee in person and the learned Advocate for the Respondents have argued on all the points and also relied on the case laws. Since it appear from the facts on record that it is necessary to remand back the matter to the trial Judge for passing necessary orders below the applications Exh. U-54 and Exh. U-75 and to give opportunity to both parties to produce their evidence thereafter, it is not nessary to consider their arguments on other points. In the result, the Points Nos. (1) to (3) are decided accordingly.

18. With this, I proceed to pass the following order :—

Order

(*1*) Revision Application (ULP) No. 204 of 2001 is hereby partly allowed.

(*2*) The final order dated 3rd August 2001 passed by the trial Judge in Complaint (ULP) No. 594 of 1996 is hereby set aside.

(*3*) Complaint (ULP) No. 594 of 1996 is hereby remanded back to the Labour Court, Mumbai, with a direction to decide the applications Exh. U-54 and U-75 and then to give opportunity to both parties to produce their evidence and on evidence decide the said complaint afresh.

(*4*) The trial Judge is hereby further directed to decide the said complaint in the light of the above discussions, with in a period of 6 months.

M. L. HARPALE,
Member,
Industrial Court, Mumbai.

Mumbai,
Dated the 29th June 2002.

K. G. SATHE
Registrar,
Industrial Court, Mumbai.
Dated the 3rd July 2002.

INDUSTRIAL COURT MAHARASHTRA AT MUMBAI

BEFORE SHRI U. R. PATIL PERSIDENT

REVISION APPLICATION (ULP) No. 70 OF 2002.—In Misc. Criminal Complaint (ULP) No. 216/01.—(1) M/s. Cambata Aviation, Pvt. Ltd, (2) Shri R. A. Phatak, Personnel Manager, M/s. Cambata Aviation, Pvt. Ltd., Both at 2nd floor Viewing Gallery, Chhatrapati Shivaji International Airport, Sahara, Andheri (E), Mumbai-99.—*Applicants*—*Versus*—Shri Gopalan Evacha, R. B. Vishwadarshan, Behind Sainagar, No. 1, Navghar Road No. 5, Bhayander (E), Dist. Thane.—*Respondent.*

In the matter of Revision U/s. 44 of the M. R. T. U. and P. U. L. P. Act, 1971.

CORAM.— Shri. U. R. Patil, President.

Appearances.— Shri Sunil Shroff, Ld. Advocate for the Applicants.

Shri S. A. Sawant, Ld. Advocate for the Respondent.

Oral Judgement

(27th June 2002)

The present revision application is preferred by the Applicants feeling aggrieved of the order of issuance of process dated 22nd November 2001 passed by the 10th Labour Court, Mumbai in Misc. Cr. Complaint (ULP) No. 216/2001 for non compliance of the order dated 27th September 2001 in Complaint (ULP) No. 81/96 whereby the Original Respondent Company was directed to cease and desist from indulging into the unfair labour practice and to allow the Complainant to resume his duties and allow him to work on his original work-place where he was working in December, 1994. The Company was also directed to consider the services of the Complainant from January, 1995 with full back wages and continuity of service, etc.

2. The brief facts giving rise to the case may be stated as follows :—

Record reveals that the Original Complaint (ULP) No. 81/96 was filed by Mr. Gopalan Evacha against the Respondents *viz.* (1) M/s. Cambata Aviation, Pvt. Ltd, (2) Mr. Nicholson, Director and (3) Mr. L. D. Borkar, Personnel Manager. The said complaint has been allowed by the 7th labour Court, Mumbai, as referred to above. The Original Complainant thereafter filed Misc. Criminal Complaint (ULP) No. 216/2001 against the Original Respondent *i.e.* employer U/s. 48(*1*) read with Sections 38, 40, 41 and 55 of the M.R.T.U. and P.U.L.P. Act, 1971 for non-compliance of the order of the 7th labour Court and to punish the Accused according to law.

3. The 10th Labour Court, Mumbai before issuing the process recorded the verification of the Original Complainant Shri Gopalan Evacha and on satisfaction thereto, issued the process, detailed above. Record further indicates that on the Application of the Original Complainant Exh. U-7, name of Mr. Nicholson has been deleted and the present Criminal Complaint is only against the two Accused persons *i. e.* the Company and Mr. Borkar. The Applicants in the Revision Application contended that the order of issuance of process by the Labour Court is illegal and erroneous as on account of particular circumstances, the Company could not comply the order of the Labour Court. The another contention is that there is a Revision Application pending before the Industrial Court, Mumbai presided by Shri S. G. Kadam against the order dated 27th September 2001 passed by the Labour Court in the Original Complaint and thereby requested to set aside the order of issuance of process.

4. I have called for the record and proceedings and gone through the same. Heard Ld. Advocates for the parties. The following points arise for my determination, with my findings thereon, as below :—

Points.—

(*1*) Whether Revision Application (ULP) No. 70/2002 is to be allowed by setting aside the order of issuance of process dated 22nd November 2001 ?

(*2*) What order and relief ?

Findings.—

Point No. *1* — Partly allowed.

Point No. *2* — Please see order below.

Reasons

5. *Point No. 1* :—It is seen that originally the Complainant Shri Gopalan Evacha initiated Complaint (ULP) No. 81/96 alleging unfair labour practices on the part of the employer *i. e.* the Respondents and sought for the reliefs, detailed above. The Labour Court allowed the said complaint by its judgment and order dated 27th September 2001. Because of the non-compliance of the said order, the Original Complainant has filed Misc. Criminal Complaint (ULP) No. 216/2001 U/s. 48(*1*) read with Sec. 38, 40, 41 and 55 of the M.R.T.U. and P.U.L.P. Act, wherein the Labour Court issued process against the accused persons. Now the main contention and grievance of Mr. Sunil Shroff, Ld. Advocate for the Applicants is that the Applicant No. 2 Shri R. A. Phatak in the instant Revision Application has been wrongly served with the summons of the Labour Court because of the application of the Complainant dated 13th December 2001. As per the submission of Mr. Sunil Shroff, in the Original Complaint (ULP) No. 81/96 and even in the Misc. Cr. Complaint (ULP) No. 216/2001, Mr. R. A. Phatak was not a party and therefore the Court has committed error and illegality. The second submission canvassed by Mr. Sunil Shroff is that feeling aggrieved of the judgment dated 27th September 2001 in the Original Complaint (ULP) No. 81/96, Revision Application is preferred by the Applicant Company and the said Revision is pending before the Industrial Court, Mumbai presided by Shri S. G. Kadam. Thus according to Mr. Sunil Shroff, under the said circumstances, the Labour Court ought not to have issued the process and stressed fore-calling and quashing the order of issuance of process dated 22nd November 2001.

6. On carefully going through the record and proceeding, it indicates that yet Original Accused No. 3 Shri L. D. Borkar has not been served with the summons and as per the submission of Mr. S. A. Sawant, Ld. Advocate for the Complainant, he is going to delete the name of Mr. Borkar because he has been already retired and his address is not traceable. It is also to be noted that in the Criminal Complaint, name of Mr. R. A. Pathak is not figuring as Accused and the Labour Court simply on the Application of the Original Complainant issued the process on the address of Mr. R. A. Pathak. The said issuance of process appears to be on the basis of the prayer made by the Complainant to the effect that "notices may please be issued to the Accused on the following addresses." On going through the said Application dated 13th December 2001, it indicates that there is no prayer made that the persons mentioned therein and particularly Mr. R. A. Pathak be permitted to be added as Accused in the Criminal Complaint. Thus without seeking the relief to that effect and the amendment to the Main Criminal Complaint, the Labour Court ought not to have issued the process against Mr. R. A. Pathak. This is a patent illegality and error committed by the Labour Court, apparent on the face of the record. Thus the submission of Mr. Sunil Shroff on this point appears to be legal and proper and consistent to the record.

7. During the course of arguments, Mr. S. A. Sawant, Ld. Advocate for the Original Complainant submitted that he is going to prefer the Application before the Labour Court for deleting the name of Mr. L. D. Borkar and for adding the name of Mr. R. A. Pathak in the Criminal Complaint.

8. It is to be noted that Mr. Sunil Shroff has clearly admitted that so far the order of the Labour Court dated 27th September 2001 is admittedly not complied with. In support of the said contention, he pointed out the circumstances, but I don't find that at this stage the said submission is to be considered. It is because the Revision Application, detailed above, is pending before the Industrial Court and the Criminal Complaint is also to be tried by the Labour Court. Therefore, if any opinion is expressed on the said points, it will cause prejudice to the either side. The Labour Court has before issuing the process recorded the verification of the Complainant and the same appears to be consistent to the contents of the Criminal Complaint, regarding the non-compliance of the order dated 27th September 2001 passed by the 7th Labour Court, Mumbai. The Labour Court has on the basis of the record and verification of the Complainant issued the process and I don't find that there is any illegality or error for the interference of the Industrial Court U/s. 44 of the M.R.T.U. and P.U.L.P. Act. The issuance of process against the Applicant No. 1 *i. e.* the Company is proper and so far Applicant No. 2 Shri R. A. Phatak is concerned, as observed earlier, the issuance of process against him is illegal and therefore the Revision Application deserves to be partly allowed. Hence, I answer the Point No. 1 accordingly.

9. *Point No. 2* :—Revision Application (ULP) No. 70/2002 is partly allowed as under :—

The order of issuance of process against the Applicant No. 2 *viz.* Shri R. A. Phatak is quashed and set aside.

No order as to costs.

U. R. PATIL,
President,
Industrial Court, Maharashtra, Mumbai.

Mumbai,
dated the 27th June 2002.

K. G. SATHE,
Registrar,
Industrial Court, Mumbai.
dated the 3rd July 2002.

IN THE INDUSTRIAL COURT AT MUMBAI

REVISION APPLICATION (ULP) No. 197 OF 2001.—(1) Laxman Bhiwa Kamble, (2) Smita Suresh Salap, (3) A. N. Pai, (4) Narendra Chanaiya Gujari, (5) Sumedh Damodar Savadkar, (6) Supriya S. Rane, (7) Smt. Bina Khatu, (8) Mahendra H. Gupta, (9) Krushna Hari Shinde, (10) Kashinath M. Rauvat, (11) Kailash Shripuram, (12) Satish Babu Trinbekkar, (13) Sudhir Shriram Jagushte, (14) Gerald Patrick D'Souza, (15) Ramesh Vishram Gore.—C/o. Krushna Shinde, Abhinav Nagar Chawal Committee, B-18/1, Wadala, Mumbai-400 031.—*Applicants.*—*Versus*—Apna Sahakari Bank Limited, Administrative Office, 5/6 North Villa, Parmar Guruji Marg, Parel, Mumbai-400 012.—*Respondents.*

In the matter of Revisional Application under Sec. 44 of the M. R. T. U. and P. U. L. P. Act, 1971, against the Order dated 25th October, 2001 in Complaint (ULP) No. 491 of 2001.

Present.— Shri M. L. Harpale, Member, Industrial Court, Mumbai.

Appearances.— Shri J. B. Attar Advocate for the Applicants.

Shri Nagwekar, Advocate for the Respondents.

Judgement and Order

1. The present Applicants are the Complainants in the complaint being Complaint (ULP) No. 491 of 2001 filed against the Opponent Bank for having committed unfair labour practices under Items 1(a), (b), (d), and (f) of Schedule-IV of the M.R.T.U. and P.U.L.P. Act, 1971 (hereinafter the present Applicants are referred to as the Complainants and the Opponent Bank is referred to as the Respondent Bank).

2. The Complainants have approached the Labour Court with the following facts :—

They are working with the Respondent bank as daily collections agents from last more than 15 years. They are getting 2% commission on the collection collected by them from the bank customers. On collection, they deposit the same in the Respondent bank. Thus, they are the employees of the Respondent bank within the meaning of definition under Sec. 3(*13*) of the BIR Act. It is further contended that they have formed the union. In the circumstances, the Respondent bank has terminated their services. Since there are more than 300 employees in the Respondent bank, it was necessary for it to obtain necessary permission from the Government before terminating their services. Thus, the Respondent bank has engaged in unfair labour practices under items 1(a), (b), (d), and (f) of Schedule-IV of the M.R.T.U. and P.U.L.P. Act. Hence, they have filed the said complaint.

3. Alongwith the said complaint, the Complainants filed application Exh. U-2 for interim relief. On appearance, the Respondent bank filed their say at Exh. C-2 and denied the claim of the Complainants and also the reliefs sought by them. On hearing both parties and on considering the material on record, the trial Judge was pleased to reject the application for interim relief Exh. U-2 *vide* his order dated 25th October 2001.

4. Being aggrieved by the said interim order dated 25th October 2001 passed below the interim relief application Exh. U-2 in Complaint (ULP) No. 491 of 2001, the Complainants have brought the present revision application on the grounds as given in their revision petition.

5. Heard the learned Advocates for both parties. On considering their arguments, case laws relied on by them and on considering the material on record, the following points arise for my determination and I have recorded my findings thereon for the reasons stated below :—

Points	*Findings*
(1) Whether the learned trial Judge has rightly decided the points and rightly passed the interim order dated 25th October, 2001 below the application Exh. U-2 ?	No.
(2) Whether it is necessary to interfere with the findings recorded by the learned trial Judge and his order dated 25th October, 2001 passed below the application Exh. U-2 ?	Yes.
(3) What order ?	As per the order below.

Reasons

6. In the present case, the Complainants are working as daily collection agents of the Respondent bank. They are getting collection at the rate of 2% on the collections / deposits collected by them for being deposited in the Respondent bank. On the facts, the Respondent bank has come with the case that the Complainants are appointed on contract basis and, therefore, they cannot be called as employees. Further, they are not employees within the meaning of definition under Sec. 3(*13*) of the BIR Act, 1946 and under Sec. 2(s) of the Industrial Dispute Act, 1947. Therefore, they cannot raise dispute under the M.R.T.U. and P.U.L.P. Act.

7. The learned Advocate for the Complainants has mainly relied on the case of Apex Court between Indian Bank Association *V/s.* Workmen of Syndicate Bank, of which copy of internet is filed on record. From the said copy, it appears that the said case is decided on 13th January, 2001 and its citation is *2001 SOL Case No. 103.* The Lordships have held therein that the depositors/collectores of banks are the workers within the meaning of Industrial Disputes Act. The said case was cited before the trial Court and the trial Court has discussed the observations therein in his order dated 25th October, 2001 passed below the application Exh. U-2. On considering the facts, the observations of the Supreme Court and other cases relied on by the Advocate for the Respondents, the trial Judge has come to the conclusion that the above case of the Supreme Court cannot be made applicable to the present case. The trial judge has also come to the conclusion that the Complainants have *prima facie* failed to prove their relationship with the Respondent bank as employees and the employer. On the above findings, the trial Judge has held that the Complainants have not made out a *prima facie* case and point of balance of convenience does not lie in their favour.

8. Now, the main question is as to whether the Complainants have proved *prima facie* that they are the employees of the Respondent bank. The learned Advocate for the Complainants has submitted that the Complainants are the employees of the Respondent bank. The definition under Sec. 3(*13*) of the BIR Act also permits them to call as the employees. The Apex Court in the above case has also decided that the employees like them, who are collecting depositing from the bank customers under the Scheme known as Pigmy Scheme or daily collection scheme, are called as the employees. They have also formed a union and they are entitled to seek protection and interim reliefs from the Respondent bank. On the other hand, the learned Advocate for the Respondent bank has submitted that the Complainants are not the employees of the Respondent bank, therefore, the provisions under the M.R.T.U. and P.U.L.P. Act or BIR Act or Industrial Dispute Act will not apply attract to the present case. On the facts, the trial Judge has held that the Complainants are not employees of the Respondent bank on the reasons *viz.* (1) they are engaged on commission basis; (2) some of them have crossed the age of superannuation; (3) the Respondent bank cannot have any check or control on their activities; (4) sometimes, their relatives are depositing the amounts in the Respondent bank; (5) some of them are working in other employment; (6) they are concerned with the Respondent bank to the extent of their commission; (7) no rules are applicable to them for their recruitment, appointment, qualifications, working hours etc.; (8) their work depends on the customers who want to deposit the amounts etc. I must mention here that all the above points, except one or twos were agitated before the Apex Court. In the present case, it has been brought on record that sometimes the relatives of the complaints deposit the amounts of collection in the Respondent Bank. Even if it presumed that it happens in respect of some of the Complainants, the fact remains that the amounts of collection are deposited in the Respondent bank, on their behalf and they are responsible for depositing the amounts in the Respondent bank. It is, therefore not acceptable that the observations in the case of the Apex Court cannot be made applicable to the present case, only on the above ground.

9. It is also to be noted that though the case before the Apex Court was numbered as Civil Appeals, the dispute and the common questions involved therein were referred to under Sec. 7(*a*) and 10(*1*) (d) of the Industrial Dispute Act by the Government of India, Ministry of Labour. The only thing is that the matters were not under the M.R.T.U. and P.U.L.P. Act. Again, it cannot be said that the observations in the case of the Apex Court cannot be made applicable to the present case.

10. From the above discussions, it *prima facie* appears that the Complainants are the employees of the Respondent bank. If it is so, it is necessary to see as to whether the Complainants have made out a *prima facie* case in respect of the unfair labour practices, as alleged and whether the point of balance of convenience lies in their favour. The trial Judge has come to the conclusion that the Complainants are not the employees of the Respondent bank and on the said findings decided the point of *prima facie* case and balance of convenience. The trial Judge has not discussed the fact with regard to the unfair labour practices committed by the Respondents. The trial Judge has also not discussed in detail the point of balance of convenience. It is the case of the Complainants that the Respondent bank discontinued their services without paying them retrenchment compensation, notice pay or without following due process of law. The trial Judge has not considered this aspect, while deciding the application for interim reliefs. Anyway, it needs to remand the matter back to the trial Court to decide the above things.

11. The learned Advocate for the Respondents has submitted that the present Complainants are not the regular employees of the Respondent bank and they do not come under the definition of employees. If there is such dispute of relationship, it should be resolved by the proper forum. In support of his submissions, he has relied on well-known cases of Cipla Limited and Kalyani Steel Limited decided by the Apex Court. In reply, the learned Advocate for the Complainants has submitted that the facts in the both the cases are different than the facts of the present case, therefore, both these judgments cannot be made applicable to the present case. In the present case, the Complainants are not working with the contractor, but it appears that they are employees of the Respondent bank. Further, none of the Complainants is working under any contractor or licenced contractor. Having gone through the observations in both the cases of the Apex Court, it appears substance in the submissions made by the learned Advocate for the Complainants.

12. In view of the above discussions, it is necessary to remand this matter back to the trial Court for deciding the application Exh. U-2 for interim relief afresh in the light of the above observations. In the result, the Points Nos. (1) and (2) are hereby decided accordingly.

13. With this, I proceed to pass the following order :—

Order

(1) Revision Application (ULP) No. 197 of 2001 is hereby partly allowed.

(2) This matter is remanded back to the Second Labour Court, Mumbai, for deciding the application Exh. U-2 for interim relief filed in Complaint (ULP) No. 491 of 2001, afresh as early as possible.

(3) The order dated 25th October, 2001 below Exh. U-2 is hereby set aside.

M. L. HARPALE,
Member,
Industrial Court, Mumbai.

Mumbai,
dated the 4th July 2002.

K. G. SATHE,
Registrar,
Industrial Court, Mumbai.
dated the 8th July 2002.

INDUSTRIAL COURT MAHARASHTRA AT MUMBAI

BEFORE SHRI U. R. PATIL, PRESIDENT

REVISION APPLICATION (ULP) No. 93 OF 2002.—In Misc. Criminal Complaint (ULP) No. 37 of 2002.—(1) Shri Sudhir Thackersey, Chariman and Managing Director, The Hindustan Spg. Wvg. Mills Ltd., Yadav-Patil Lane, Off. Veer Savarkar Marg, Prabhadevi, Mumbai—400 025. (2) Shri R. L. Theker, General Manager, The Hindoostan Spg. Wvg. Mills Ltd., Division Crown, Mumbai-400 025.—*Applicants—Versus*—– (1) Shri Sarjerao Bajirao Dudhane; (2) Shri Ramchandra Haribhau Garje; (3) Shri Rajkumar Baburao Ghorpade; (4) Shri Bajirao Laxman Raut; (5) Shri Bharat Deoshankar Purohit; (6) Shri Vilas Rajaram Tekke; (7) Shri Madhukar Shankar Mohite; All C/o. Shri Kishore R. Deshpande, A/5, Bakul Niwas, Lalubhai Park, Andheri (W), Mumbai-400 058.—*Respondents.*

In the matter of Revision U/s. 44 of the M. R. T. U. and P. U. L. P. Act, 1971.

CORAM.— U. R. Patil, President.

Appearances.— Shri S. P. Singh, Ld. Advocate for the Applicants.

Shri K. R. Deshpande, Ld. Representative for the Respondents.

Oral Judgment

(17th July 2002)

The present Revision Application is preferred by the Original Respondents *i. e.* Accused in Misc. Criminal Complaint (ULP) No. 37/2002 against the Order below Exh. U-4 passed by the 1st Labour Court, Mumbai dated 10th May 2002 whereby the said Labour Court rejected the Application Exh. C-4 of the Accused for recalling and quashing the process issued by the Labour Court dated 21st March 2002.

2. The brief facts giving rise to the case may be stated as follows :—

Record reveals that the Original Complaint (ULP) No. 1021/2001 was filed by the 7 Complainants against the Applicants herein alleging unfair labour practice on their part and requested in the said Complaint for the reliefs stated therein. It is seen that during the pendency of the said Complaint, Application Exh. U-2 was taken out by the Complainants before the Industrial Court, Mumbai presided by Shri R. U. Ingule and the said Industrial Court on considering the reply and submissions allowed the Application Exh. U-2 by order dated 7th March 2002 whereby the Opponent *i. e.* Applicants herein were directed to observe the Term No. 3 of the settlement dated 25th March 1998 inregard to debbies and the terms of the settlement dated 20th January 2001 in cluding the term in respect of running 480 looms and maintaining complement of workforce. It was further ordered that in the event the Opponent Mill is unable to provide work, then it is directed to pay idle wages or to take appropriate legal action. The Opponents were further directed to disburse wages on the 10th day of following month, pending the disposal of the complaint at Exh. U-1.

3. It indicates that according to the Original Complainants the Applicants herein who were the Respondents in the Original Complaint (ULP) No. 1021/2001 have failed to obey and comply the order of the Industrial Court and therefore they lodged the Misc. Criminal Complaint (ULP) No. 37/2002 u/s. 48(1) of the M.R.T.U. and P.U.L.P. Act and requested for that the Applicants herein be dealt with as per the said section. The Labour Court recorded the verification of Shri Bajirao Laxman Raut on 20th March 2002 and passed order below Exh. U-1 dated 20th March 2002 and thereby issued the process against the Respondents (Applicants herein) u/s. 48(1) of the M.R.T.U. and P.U.L.P. Act, 1971 returnable on 28th March 2002.

4. It is seen that feeling aggrieved of the said order of the Labour Court, the Applicants herein preferred Application Exh. C-4 and thereby requested the Labour Court to quash and set aside the order of issuance of process, referred to above and the said Application has been rejected by the impugned order dated 10th May 2002. Therefore, the Applicants have preferred the present Revision Application and claimed exception to the impugned order passed by the Labour Court, detailed above.

5. The contentions in the Application Exh. C-4 of the Applicants be summarised as follows :—

It is submitted that in the Complaint (ULP) No. 1021/2001 filed before the Industrial Court, Mumbai the Complainants have *inter alia* prayed for working of 480 Auto Looms and payment of wages on 10th of every month. The Original Respondents denied the allegations made by the Complainants by filing 3 affidavits dated 18th December 2001, 20th December 2001 and 22nd December 2002. These affidavits are filed alongwith the said Application Exh. C-4 at Annexure 'A' Colly. It was also contended that the Labour Court was pleaced to issue summons on 21st March 2002 in Form 18-A to the Respondents without issuing show cause notice to them in Form 21 of the Labour Court (Practice and Procedure) Rules 1975. Respondents further contended that Rule 94 of the Labour Court (Practice and Procedure) Rules, 1975 states that if the Respondents are not present in the Court, notice should be issued to such persons calling upon them to show cause as to why proper action u/s. 48 of the M.R.T.U. and P.U.L.P. Act should not be taken against them. It is submitted that Respondent No. 1 is the Chairman and Managing Director and Respondent No. 2 is the General Manager of the Company and they are not at all concerned with the day-to-day activities. Similarly they are not responsible for the implementation of the order of the Court, so also for the payment of wages to the workers on 10th of every month, as ordered by the Industrial Court.

6. The another contention is that the Respondents have not committed any offence for which they can be tried. According to them, there is no *prima facie* case made out for issuance of the process and the charges levelled against them are baseless. The Respondents state that they have not flouted the dignity of law and majesty of the Court in any manner. The another grievance is that before issuing the summons to the Respondent, enquiry was required to be made U/s. 202 of the Criminal P. C. and should have also followed Sec. 204 of the Criminal P. C. and summons should not been issued against them under sub-section (1) until a list of prosecution witness has been filed. According to them, there was no prosecution witnesses list and also the prosecution has not complied with Rule 87 of the Labour Court (Practices and Procedure) Rule, 1975.

7. It was further submitted that the wages of the workers are not paid on due date *i. e.* on 10th of every month not only to 7 workers, but to 3400 such workmen due to various reasons such as termedous financial crisis, accumulation of stocks and that total accumulated loss is Rs. 151.87 corers as on 31st December 2001. The Company is suffering continuous heavy losses every month and its not worth is wiped out and therefore the Company became sick and it was forced to move the Board for Industrial and Financial Reconstruction (BIFR) under the Sick Industrial Companies Act, 1985. It is submitted that non-payment of wages is not intentional and deliberate and the same is due to general recession, typical market condition, etc. Thus on these and other grounds, it was requested to the Labour Court to re-call and quash the issuance of process detailed above.

8. The Original Complainants by filing their reply Exh. U-3 resisted the Application and in substance it is contended that the Application of the Original Respondents *i. e.* Exh. C-4 is misconceived and untenable in law and deserves to be rejected.

9. I have called for the record and proceedings and gone through the same. Heard Mr. S. P. Singh, Ld. Advocates for the Applicants and Mr. K. R. Deshpande, Ld. Representative for the Respondents. The following points arise for my determination, with my findings thereon, as below :—

Points

(1) Whether Revision Application (ULP) No. 93/2002 is to be allowed by setting aside the order below Exh. C-4 passed by 1st Labour Court, Mumbai ?

(ii) What order and relief ?

Findings

Point No. 1 — No.

Point No. 2 — Please see order below.

Reasons

10. *Point No. 1* :—The Applicants in the Revision Application have challenged the order below Exh. C-4 dated 10th May 2002 whereby the 1st Labour Court, Mumbai rejected the prayer of the Applicants for recalling and quashing the process issued on 21st March 2002. Now the main contention of Mr. S. P. Singh, Ld. Advocate for the Applicants is that the Applicant No. 2 herein has appeared in response to the order of issuance of process and has furnished the bail-bond to the Labour Court. According to Mr. Singh, Mr. Sudhir Thackersey who is the Chairman and Managing Director is not responsible for carrying out the order of the Industrial Court dated 7th March 2002 and the Labour Court should not have issued the process against him. The said contention and grievance of Mr. Singh, Ld. Advocate for the Applicants cannot be accepted for the simple reason that in the Original Complaint (ULP) No. 1021/2001, there were 2 Respondents *viz.* Mr. Sudhir Thackersey and Mr. R. L. Thaker. In the said Complaint, Application Exh. U-2 was moved by the Complainants and the Industrial Court has passed order dated 7th March 2002 and thereby granted the interim relief, referred to above. Meaning thereby, both the Original Respondents were party to the proceedings and they were aware of the order passed by the Industrial Court. As the said order passed by the Industrial Court on merits and in presence of the parties, it cannot be said that the same was not pointed out to him. In view of this position, the submission of Mr. S. P. Singh cannot be accepted.

11. The another grievance made by Shri S. P. Singh, Ld. Advocate for the Applicant is that infact the Criminal Complaint should have been filed by Mr. Raut who was working in Department No. 8 alongwith other workers and by Mr. Dudhane who was working in Department No. 12. It is because the Criminal Complaint has been logged by other 5 workers. The said submission of Mr. Singh at this juncture cannot be accepted for the reason that the Original Complaint (ULP) No. 1021/2001 indicates that it was filed by 7 Complainants in which the names of Mr. Dudhane and Mr. Raut are figuring. Therefore, I don't find that the filing of the Criminal Complaint by 7 persons is bad for misjoinder of the parties. It is because when they were the Original Complainants and the Interim Relief has been passed in their favour, filing of the Criminal Complaint by the aforesaid 7 persons is not defective and therefore I don't find any weight in the grievance made by Mr. S. P. Singh. There is no question of causing any prejudice due to filing of the Criminal Complaint by the 7 persons as shown in the title and particularly when it is their grievance that the Applicants herein have not complied with the Order passed by the Industrial Court referred to above.

12. The another main contention and point stressed by Mr. Singh, Ld. Advocate for the Applicants is that as per Rule 94 of the Labour Court (Practice and Procedure) Rules, 1975, the Labour Court should have issued show cause notice to Mr. Sudhir Thackersey and without giving an opportunity of making his submission, the issuance of process by the Labour Court is erroneous. The said submission of Mr. Singh cannot be accepted for the simple reason that the Criminal Complaint filed by the Complainants is U/s. 48(1) of the M.R.T.U. and P.U.L.P. Act which pertains to contempts of Industrial or Labour Courts and the wording of the said Section is as follows :—

> "(1) Any person who fails to comply with any order of the Court under clause (b) of sub-section (1) or sub-section (2) of Section 30 of this Act shall, on conviction, be punished with imprisonment which may extend to three months or with find which may extend to five thousand rupees."

Thus it makes it clear that as per Section 48(1), the Criminal Complaint has been initiated and the Labour Court has taken the cognisance thereof. Therefore the question of applying Rule No. 94 in the case in hand does not arise.

13. The another submission advanced by Mr. Singh is that in the Revision Application from para Nos. 1 to 4, the Applicants have set out in details regarding the condition of Hindoostan Spg. and Weaving Mills Ltd. and on going through the said paras, it shows that the said Mill has approached the BIFR for declaration of 'Sick Industry'. It further indicates that the said Mill is in losses to the tune of Rs. 151.87 crores and therefore facing financial crisis and hence not able to pay regular wages on due date, which is beyond the control of the Management. The sum and substance from para Nos. 1 to 4 of the Revision Application reflects that the said Mill is not in financial good condition. Realising this position, Mr. Singh canvassed that the Applicants herein have not deliberately flouted or disobeyed the order of the Industrial Court, but because of the circumstance beyond the control, the order passed by the Industrial Court in respect of payment of wages by 10th of every month could not be complied with. The another contention raised by Mr. Singh is that the workers who have filed the Criminal Complaint were offered work in another Loom Section on the similar pay, condition, etc. because Loom Section Nos. 8 and 12 are kept idle and though knowing this position, the said workers have refused to work. In substance, Mr. Singh urged that in view of this factual position, the question of disobeying the order of the Industrial Court does not arise and this fact should have been considered by the Labour Court while deciding Application Exh. C-4.

14. It is significant to note that on perusal of the record and proceedings, it indicates that before issuing the process, the Labour Court has recorded the verification of Shri Bajirao Laxman Raut and the same appears to be consistent to the grievance made in the Criminal Complaint. The Labour Court has after considering the facts and circumstances and the verification of the concerned worker, passed a detail order below Exh. U-1 dated 20th March 2002 and on satisfying thereof, has taken the cognizance of the Criminal Complaint U/s. 48(1) of the M.R.T.U. and P.U.L.P. Act and issued the process R/o. 28th March 2002. I don't find that there is any illegality or error committed by the Labour Court while issuing the process when in the Criminal Complaint, the grievance of the Complainants is in respect of non-compliance of the order of the Industrial Court passed below Exh. U-2 dated 7th March 2002.

15. I am aware that much was canvassed and urged by Mr. S. P. Sigh for the Applicants regarding the present financial crisis and the position of Hindoostan Spg. and Weaving Mills, as set out in the Revision Application and detailed above and though the same may be proper, but at this stage it is rather difficult for this Court to accept the contentions on the said point

because if any opinion is expressed by this Court, it would cause prejudice to either side. While facing the criminal trial, it will be open for the Applicants herein to point out their *bona fide* and also that they had offered work to the concerned workers, but they declined to work and insisted for the work only on Looms in Sections 8 and 12. Mr. Singh has canvassed that the order in respect of payment of wages on 10th of every month is not only complied with in respect of 7 Complainants, but also in respect of other workers and the payment was made on 10th or 15th or 20th or 24th of every month because of the financial difficulties. Though the said submission of Mr. Singh is proper, but at this juncture, the said point cannot be considered because it touches the merits and de-merits pending the Criminal Complaint and it will not be proper on my part to deal with this aspect in detail.

16. It is to be noted that as per Sec. 200 of the Criminal Procedure Code, if the Criminal Complaint is filed, then the Magistrate taking cognizance of an offence on complaint is to examine on oath the Complainant and the witnesses present, if any, and the substance of such examination shall be reduced in writing and shall be signed by the Complainant and the witnesses and also by the Magistrate. Than on satisfaction with the said statement, the process is issued U/s. 204 of the Criminal Procedure Code. The grievance made by Mr. Singh in the present case is that the Complainants have not given the list of witnesses and therefore that being a condition precedent, the Labour Court should not have issued the process against the Applicants herein. On going through the Misc. Criminal Complaint and particularly Clause (*e*) on page No. 3, it shows that there is a mention that the Complainants rely on the evidence of Complainants, as mentioned in the title. Meaning thereby the Complainants figuring in the title are the witnesses and therefore the submission of Mr. Singh on this score also cannot be accepted. On carefully examining the record and proceedings and the order dated 7th March, 2002 of the Industrial Court and the verification recorded by the Labour Court and the order of issuance of process, detailed above, I don't find that there is any apparent error or illegality on the face of the record.

17. During the course of arguments Mr. Singh submitted that though the workers *i. e.* the Complainants were offered the work in other Loom Section, but they have refused to work and further contended that they cannot be provided work in Loom Sections 8 and 12 because the same are kept idle right from November 2001. In view of this position, Mr. Singh invited my attention to a case reported in *2002 (94) FLR 96* (Bajaj Tempo Ltd. *V/s.* Bhartiya Kamgar Sena and another). On going through this case it indicates that there was a problem for consideration under Item 9 of Sch. IV and Sec. 9-A of the Industrial Dispute Act, 1947. There was a weekly off-shifted by Company from Thursday to Wednesday-Union did not agree with-Workmen remained absent on Thursday-Wages deducted by Company merely by changing a weekly off, without reducing the number of paid Holidays-Employer has not engaged in any unfair labour practice-Not a change in service conditions. Relying on the said case, Mr. Singh stressed that similarly in this case, as detailed above, the workers were offered the same work on same condition and wages in other Loom Section, but they refused to work and hence there is no fault on the part of the Applicants and the question of disobeying the order of the Industrial Court does not arise. It is significant to note that there is a controversy between the parties on the aforesaid issue. It is because Mr. K. R. Deshpande, Ld. Representative for the workers canvassed that no such work was offered and no notice was displayed by the employer regarding the change of Loom Section in which the work was to be offered to the Complainants. Similarly Mr. K. R. Deshpande pointed out that no wages have been paid to the Complainants though ordered by the Industrial Court which should have been paid by 10th of every month. In view of the aforesaid rival contentions advanced by both the parties. I don't find that the ruling

relied by Mr. Singh, referred to above, is helpful while deciding the Revision Application. It is because it is for the concerned parties to prove by oral or documentary evidence at the time of hearing the Misc. Criminal Complaint and to discharge their burden of proof on the controversy, detailed above and then the Labour Court will consider whether there is a deliberate failure on the part of the Applicants herein for non-compliance of the order passed below Exh, U-2 dated 7th March, 2002.

18. It is to be noted that the Revision Application preferred by the Applicants is against the Order passed below Exh. U-4 dated 10th May, 2002 whereby the 1st Labour Court rejected the said Application and the same was in respect of recalling and quashing the process issued by the Labour Court dated 21st March, 2002. Thus when the Labour Court has rejected the Application Exh. C-4, it indicates that the Order dated 21st March, 2002 of issuance of process is also challenged in the present Revision Application.

19. On carefully scrutinising the record and proceedings, I don't find that there is any illegality or perversity in the impugned order passed by the Labour Court. Sec. 44 of the M.R.T.U. and P.U.L.P. Act confers power upon the Industrial Court in so far as evidence is concerned, to set aside the order under Revision when the record and proceedings reasonably read, is incapable of supporting the Order. In the case in hand, as detailed above, the Order passed by the Labour Court is consistent to the record and therefore the interference of the Industrial Court is not called for. Hence, I answer Point No. 1 in the *Negative.*

20. *Point No. 2* :—In view of the foregoing reasons, I pass the following order :—

Order

Revision Application (ULP) No. 93 of 2002 is dismissed.

No order as to costs.

U. R. PATIL,
President,
Industrial Court, Mah., Mumbai.

Mumbai,
Dated the 17th July 2002.

K. G. SATHE,
Registrar,
Industrial Court, Mumbai.
Dated the 19th July 2002.

IN THE INDUSTRIAL COURT MAHARASHTRA AT MUMBAI

BEFORE SHRI V. P. ROTHE, MEMBER

COMPLAINT (ULP) No. 1096 OF 2001.—(1) Shri C. R. Dhuru; (2) Shri H. B. Raul; (3) Shri P. B. Tari, C/o. H. B. Raul, 1/23, Prabhu Cottage, Pandit Satawalekar Marg, Mumbai-16.—*Complainants—Versus*—The Managing Director, National Textiles Corporation (MN) Ltd. N.T.C. House, 15th N. M. Marg, Ballard Estate, Mumbai-400 001.—*Respondent.*

CORAM.— Shri V. P. Rothe, Member.

Appearances.— Shri K. R. Deshpande for the Complainants;

Mrs. Geeta Raut, Advocate for the Respondent.

Oral Judgement

(Delivered on 29th June 2002)

1. This complaint is filed under Item-9 of Schedule-IV of the M.R.T.U. and P.U.L.P. Act. The Complainants are the employees of the Respondent, *i. e.* National Textile Corporation Limited.

2. The facts given rise to this complaint can be summarised as under.

3. Prior to 1947, in the city of Mumbai, M/s. E. D. Sasoon and Company Ltd. was having its 5 Textile Mills and one Dye Works unit. In the course of time, the ownership of the mills came to be changed and the company was renamed as India United Mills Ltd. The employees of the head office of the Mill orgainsed themselves under the banner of India United Mills Staff Union which was merged in the now organisation *i. e.* National Commercial Employees Union. It is the case of the Complainants that their service conditions came to be revised from time to time by mutual agreement in between the union and the management. The Government of India had taken over the management of the company under the provisions of Industries Development and Regulation Act, 1951. In consequence of which, all the six units came under the control of the Controller appointed by the Central Government.

4. In the year 1972, the Sick Textile Undertaking (taking over the management) Act, 1972 was enacted. The Central Government had appointed the authorised Controller to look after the working of the head office of the six units of the mill.

5. It is contended that after the Nationalisation Act was passed, the National Textile Corporation Ltd. (present Respondent) was vested with the ownership of the six textile units and the head office. The National Commercial Employees Union approached the management of the Corporation to entre into agreement for maintenance of continuity of service. As a result of the negotiations, a Memorandum of agreement was signed on 10th May 1975 by the Executive Director of the Respondent Shri A. A. Alavi and the Owner India United Mills Nos. 1 to 5 Shri J. S. Coutino General Secretary of National Commercial Employees' Union was also the Secretary of this agreement. It is the case of the Complainant that this agreement covers all the workmen as defined in the Industrial Disputes Act, 1947, and the staff member of the head quarter and the employees of all the mills. As per Clause 28 of this agreement, the working of the office of the Corporation duly governed by N.T.C. Rules. The other terms and conditions of service, pay D. A. etc. shall continue as existing regarding staff at the head quarter. The age of superannuation of the staff members was 60 as per this agreement.

6. The Pay Commissioner was appointed by the Government of India for regising the pay-scales of its employees. The pay-scales of the employees working in the Corporate offices of N. T. C. and its subsidiary were considered in the light of the recommendations of the Pay Commission. The employees of the mill accepted the recommendations of the Pay Commission subject to the condition that age of their superannuation is 60. The Complainants have submitted that in pursuance of this, the Respondent had given retirement to 57 employees of the mill on their attainment of the age of 60 years.

7. On 17th October 2000, one Shri V. R. Khedekar who is Deputy Manager of the Respondent issued a memo of retirement to Shri R. K. Mirgal Senior Assistant Typist under which Shri Mirgal was asked to take retirement on completion of 58 years of age. On 24th January, 2001, the Complainants have submitted to the Respondent a Memorandum and it was pointed out to the Respondent that the age of their retirement is 60 years. Thereafter, the Complainants have approached to the Respondent on every occasion on this issue of age of their retirement. Thereafter the memo of retirement was issued to the Complainant Shri P. B. Tari. All these memos were challenged by the Complainant by making a representation before the Respondent. But the Respondent is not acting as par the terms of agreement and making the employees to retire at the age of 58 years.

8. The Complainants have stated that in pursuance with the agreement entered into India United Mills and National Commercial Employees' Union, the service records of the employees are governed and the Respondents are not honoring this agreement. Hence, it be declared that they are engaged in unfair labour practices. Shri Khanvilkar and Shri Mirgal who were retired at the age of 58 years be re-employed and the Respondent be retrained further from giving the retirement to any of the employees at the age of 58 years.

9. This claim of the Complainant has been resisted by the Respondent as per written statement of Exh. C-4. It is submitted that this complaint is misconceived and not maintainable. The subject matter of this complaint *i. e.* policy decision of Government of India regarding the ruling back the age of retirement from 60 years to 58 years is already subjudice before the Hon'ble High Court. The identical issue thus, cannot be decided by this Court. Hence, this complaint be dismissed.

10. It is submitted that there is no provision under the M.R.T.U. and P.U.L.P. Act to file the complaint by the group of employees. This complaint being not filed by the union be dismissed. It is submitted that this Court has no jurisdiction to entertain the complaint as it is not of collective nature. It is barred by limitation. The decision of ruling back from 60 years of age to 58 was brought into force by the Government of India, from 3rd October 2000. Shri R. K. Mirgal was retired as per the order dated 17th October, 2000. Shri Mirgal has accepted the legal dues. This complaint is filed for the period of more than year from the date of retirement of Shri Mirgal. It ought to have been filed within 90 days from the date of retirement of Shri Mirgal. Hence, it is barred by time. The maintainability of the complaint thus, be decided first before proceeding with the matter. The Respondent has denied that they engaged in unfair labour practice under Item 9 of Schedule-IV. The agreement dated 10th May 1995 is arrived between the Respondent establishment and the National Commercial Employees' Union. The employees have accepted the service conditions of the Respondent Textile Corporation and as per the rules of the undertaking of the Respondent, the age of retirement is 58 years. Shri Mirgal and Shri Khanvilkar have been retired from the Respondent undertaking. The order of retirement issued to Shri P. B. Tari one of the Complainant is in accordance with the service conditions applicable to him. Thus, the Complainants have failed to make out the case. They are not entitled to get any relief. Hence, it be dismissed.

11. From the pleadings of the parties, the issues have been framed at Exh. O-4. The issues are reproduced as under. I have recorded my findings on the issues herein below :—

Issues	*Findings*
(1) Do the Complainants prove that the Respondents have engaged in unfair labour practices under Item-9 of Schedule-IV ?	Negative.
(2) Whether the Complainants are entitled to continue in service till the attainment of age of 60 years ?	Negative.
(3) Is the complaint maintainable ?	Affirmative.
(4) Is the complaint barred by limitation ?	Negative.
(5) To what reliefs the Complainants are entitled to ?	No reliefs.
(6) What order ?	As per final order.

12. *Issue Nos. 1 and 2.*—The Issue No. 1 is pertaining to the unfair labour practices alleged to be engaged in by the Respondents. The Issue No. 2 is regarding the fact whether the Complainants are entitle to continue in service till their attainment of the age of 60 years. The oral evidence of Shri Hemant Raul adduced on behalf of the Complainants as per Exh. UW-1. He has deposed that on 25th May 1966 he came to be appointed in the Mill as a Clerk. There was an agreement between the workman and the National Textile Corporation (NTC) entered on 10th May 1975. This agreement is at Exh. U-11. Annexure-A list filed alongwith the complaint is the list of the affected workmen. Some of the workmen in the Respondent Mill came to be retired at the age of 60 years as per the list of Exh. U-12. The employees of the Respondent Mill who opted out for the voluntary retirement, the list of such employees is at Exh. U-13. The Labour Commissioner did not issue any Certified Standing Orders regarding the reduction of the age of the retirement of the employees of the head office of the Mill, from 60 to 58 years. Secretary of the NTC wrote the letter to the Commissioner of Labour on 13th July 1988. This letter was written for reducing the age of the employees of the head office from 60 to 58 years. Opportunity was not given to the employees to offer their remarks on this letter of Exh. U-16. The management did not display any notice regarding the reduction in the retirement age of the employees from 60 to 58 years. The Commissioner of Labour also not issued any Certified Standing Orders regarding the above. Hence the witness UW-1 Hemant Raul has stated that his two colleagues one Mr. R. K. Mirgal and R. V. Khanvilkar came to be retired prematurely. They be taken on work. Subsequent to their retirement at all the workmen who came to be retired on attainment of age of 58 years be reinstated.

13. In his cross-examination, it is admitted by UW-1 Hemant that Mr. Khanvilkar and Mr. Mirgal have not filed any cases against the Mill for compulsorily retiring them at the age of 58 years. It is further admitted by this witness that he is not aware about the policy decision taken by the Government of India to retire its employees on attainment of age of 58 years. UW-1 is also not aware about the individual notices issued by the Central Government regarding the enhancement in the age of retirement from 58 years to 60 years to all the employees of the Mill. Letter of Exh. C-10 received by UW-1 Hemant. He is not aware about the other employees whether in receipt of such letters like Exh. C-10. He is not aware about the case filed by one Shri Samuel in the Court regarding his retirement. Even after the issue of letter of Annexure-I on 24th January 2001, he did not challenge the retirement of the employees in the Court. The present complaint is confined to the 3 Complainants. The Complainant Mr. Tari was working as Assistant Officer (Marketing), Shri C. R. Dhuru as Senior Assistant and present witness UW-1, Hemant Raul as Assistant Officer (Marketing). This witness is not aware about the contents of Writ Petition filed by the management before the Hon'ble High Court. It is admitted by the witness that the Central Government has taken over the decision of roling back the age of retirement of the employees from 60 to 58 years.

14. No oral evidence has been adduced by the Respondent Mill. The learned representative of the Complainant has urged that the Respondent NTC is covered under the Bombay Shops and Establishment Act. The employees of the Respondent are thus the employees as per the definition of the Bombay Shops and Establishment Act. The memorandum of agreement which the Complainant rely upon is at Exh. U-11. This is the agreement in between the Executive Director of the Respondent and General Secretary of the National Union of Commercial Employees. On page No. 6 of this agreement, there is clause 20 which reads as under. That the working of the offices of the Respondent Corporation will be governed by the NTC Rules as far as it relates to Saturday working and Bank holidays and other holidays and holidays concession as well as timing of office working hours. The other terms and conditions of Service, Pay, Dearness Allowance and other privileged shall continue as existing at present applicable to them under. Indu H. D. Staff Agreement, Award etc. The learned representative of the Complainant has submitted that as there was the age limit of 60 years for the employees of the Mill, that condition remain unchanged as per the Memorandum of Agreement of Exh. U-11. It is mentioned on the page 2 of this agreement that the head office of six textile units i. e. erstwhile mills is deemed to have ceased to exit and the members of the staff of the head office are required to be absorbed in each of the six textile units. It is for the Complainant to prove specifically that their age of retirement was 60 years as per the conditions of their appointment in the Mill.

15. One letter of Exh. U-14 is placed on the record. This letter shows that Complainant Raul has opted for the pay-scale given by the Respondent N. T. C. Such option of pay-scale is exercised by the Complainant with the Respondent N.T.C.'s service conditions attached to his post. This option was given in unequivocal terms on 22nd October 1984. Shri R. K. Mirgal who was senior assistant typist, came to be retired after issuing him 3 months notice due to the policy of the Central Government in rolling back in age of retirement from 60 years to 58 years. The said aggrieved person had not challenged this order of retirement, which came to be passed on 17th October 2000. The letter dated 13th July 1988 was addressed to the Commissioner of Labour, Government of Maharashtra by the National Textile Corporation. This letter is sent by registered post and it is mentioned in it that the staff of India United Mills taken over by the Corporation. It is governed by the provisions of clause Nos. 25 and 27 of the Model Standing Orders, which stipulates the retirement age of 60 years. This letter is at Exh. U-16. However, it is specifically mentioned in this letter is submitted to the authority concerned under section 3(*1*) of the Industrial Employment (Standing Orders) Act to change the age of superannuation of the clerical and subordinate staff taken over from the head office of the erstwhile India United Mills from 60 years to 58 years. This was done with a view to generate the employment opportunity for the youngsters. The unemployment problem was taken into consideration while processing this age of superannuation from 60 years to 58 years. It was further found that the employee in the age group of 50 to 60 years were not that much physically fit. All of them were entitled to get all the terminal benefits at the time of superannuation and, therefore, such an intimation was given by the Respondent N.T.C. to the Commissioner of Labour.

16. The learned representative of the Complainant has pointed out to me that the Complainant Shri H. B. Raul wrote a letter dated 26th September 1989 to the Deputy Commissioner of Labour. In this letter, the Complainant had asked to that authority to allow him to submit his remarks on the proposed amendment in Model Standing Orders as stated in the above para regarding the reduction of age from 60 years to 58 years of the employees working in N.T.C. It is submitted by the learned representative that without giving an opportunity to the Complainant to offer their remarks or giving any notice of change, it cannot be said that this amendment was carried out in the Standing Orders. One thing is clear from this submission that the Complainants were aware about the letter written by N.T.C. to the Commissioner of Labour. Though the Complainants had expressed their wish that they may be allowed to offer their remarks on this letter. No further steps have been taken by the Complainant. It is not known what the representative union of the Complainants was doing at the relevant time. There is no evidence on record as to what happened to this letter of N.T.C. to the Commissioner of Labour thereafter. One thing is clear that as per the letter of Exh. C-10, it was specifically informed to the Complainant Shri Raul on 29th May 1998 that as per the terms of Board of Directors and the resolution dated 25th May 1998, his age of superannuation was 60 years. It is admitted by the Complainant that he received this letter as the Complainant Shri Raul then failed to inform to the Respondent by giving the reply to Exh. C-10 that there was no question of informing his age of superannuation was 60 years and that too as per the terms of the resolution of the Board. Such resolution was not at all necessary had there been predetermined age of superannuation of the Complainant up to 60 years. This letter at Exh. C-10 was expected by the Complainant and they did not make any objection to it, that itself shows that the Complainant themselves have offered to the terms and conditions of the service of N.T.C. Now, it is not proper on the part of the Complainant to go back on the initial agreement and say that roling back of the age of the Central Government employees from 60 to 58 years have no effect in their service. This Memorandum of Settlement filed under Exh. U-8 at Annexure 'F' disclosing that it is the agreement in between Shri R. C. Khetan, Labour Officer of India United Mills and Shri R. S. Phonsekar, General Secretary of National Commercial Employee's Union. This settlement was taken place on 12th February 1956. The age of retirement of service of the employees was given on page No. 6 of this settlement is of 60 years. However, the company was entitled to retire an employee after attainment of age of 55 years on account of his age of infirmity if he is unable to perform his duty.

17. The terms of the settlement of Annexure 'F' and the terms of the Memorandum of Settlement of Annexure 'B' are relied upon by the learned representative of the Complainant. In support of the arguments, that the terms and conditions of the services of the Complainants are protected as per these documents and if there can be any alteration in it, without following the procedure established by law that is certainly amounts to unfair labour practice. The service conditions of the erstwhile mill staff were already merged in the service conditions of N.T.C. It is clear from the settlement that the Complainant had adopted the terms and conditions of the employment with N.T.C.

18. In the Writ Petition pending before the Hon'ble High Court, the question of roling back the age of retirement from 60 years to 58 years has been raised. In the complaint before this Court, there are allegations of unfair labour practices. In the instant case, it is necessary to see whether the alleged act of retirement memo to the Complainant is amounting to an unfair labour practice and for these reasons, I find it difficult to accept the submission of Mrs. Raut Advocate for the Respondent that. In view of the pendency of Writ Petition before Hon'ble High Court, this Court cannot hear this complaint. The issues raised in the Writ Petition are of the nature which are different from this complaint. In this complaint of unfair labour practice, it is to be seen whether there is any alleged act of unfairness on the part of N.T.C. in the reduction of age of Complainants.

19. It is an admitted fact that earlier age of retirement was increased from 58 years to 60 years to bring about the parity amongst the Officers whose services were taken over by the erstwhile mill management and freshly appointed candidates of N.T.C. on the specific conditions that there shall not be any adverse change in their service conditions. The services of the employees of the mill were taken by N.T.C. It is further seen that Board of Directors of the Respondent carry out in the amendment in the age of retirement of employees who are below board level. This was done as per the circular issued on 23rd May 1998. As per the provisions of the Memorandum of Settlement filed under Exh. U-8 from Annexure 'F-1', the Complainants are saying that their age of retirement is 60 years. This Memorandum of Agreement was for the period of one year. The subsequent agreement dated 18th July 1975 filed at Annexure 'B' with the complaint and at Exh. U-11 not mentioning anything about the settlement of Annexure 'F-1' of Exh. U-8. The document of Exh. U-11 is very much silent regarding the age of retirement. It is for the Complainant to prove specifically that as per their terms and conditions of service, their age of retirement is 60 years. The Complainants failed in discharging that burden. It is seen that N.T.C. being the undertaking of the Government simply implemented the policy decisions taken by the Central Government. In pursuance of that, earlier age of superannuation i. e. 60 years was reduced into 58 years. Where is the question of unfair labour practice in carrying out and implementing this policy decision. It is for the Complainant to prove that they are the workmen under the Industrial Disputes Act and as per the specific terms and conditions of their service, their age of retirement is 60 years. It is for the Complainant to prove that their services were specifically transferred to N.T.C. from the erstwhile mill with the same age of retirement. From the facts and evidence on record, this burden has not been discharged by the Complainants. On the contrary, it is seen that the Complainants have accepted the terms and conditions of service of N.T.C. If such acceptance of the service conditions are with a view to accept all the convenient things and disown the unwanted thing, this type of acceptance is of no use. For these reasons, I find that the Respondents have not engaged in unfair labour practice under Item 9 of Schedule-IV of the M.R.T.U. and P.U.L.P. Act. In the consequence of which, the Complainants are not entitled to continue in service till the attainment of age of 60 years. Hence, Issue Nos. 1 and 2 are answered in the negative.

20. *Issue No. 3.*—This issue pertains to maintainability of the complaint. This complaint is filed by three employees that too for the unfair labour practice alleged to be engaged in by N.T.C. which is an Industry. It is maintainable under the provisions of section 28 of the M.R.T.U. and P.U.L.P. Act. Hence, I answer Issue No. 3 in the affirmative.

21. *Issue No. 4.*—This issue is about the limitation. The Learned Counsel of the Respondent submitted that Shri Mirgal and other employees have not challenged their retirement. The cause of action of this complaint arose from the date when Shri P. B. Tari issued with letter dated 15th October 2001. It has come in the evidence of Shri Raul that the complaint is confined to the three Complainants. Even if it is for claiming the relief of reinstatement of Shri Mirgal and others, those are consequential reliefs claimed by the Complainants. Therefore, it cannot be said that the complaint is barred by limitation. As pointed out earlier, that though the Writ Petition was pending before the Hon'ble High Court, this complaint was not stayed and this being the complaint of unfair labour practice, it is maintainable.

22. The learned representative for the Complainants is relying upon the judgments reported in :—

(1) 1993-II-LLJ-1150—S.D.M. Basha *V/s.* D.I.G. of Police, Wireless Communication and Others.

(2) 1982-II-LLJ-215.

(3) 1995-I-LLJ-66—Union of India and Others *V/s.* Surendra Mohan Arora and Others.

The import of these judgment are about the administrative instructions given in the form of resolution. If such instructions have not been published in some manner to make it known for persons who are sought to be affected by it, then such instructions are of no use. In the reported case of 1993-I-LLJ-1150, the facts of our case are distinguishable from the reported case. The Complainants were aware about the letter issued to the Commissioner of Labour by N.T.C. regarding reduction of age of 58 years. The learned representative is also relying upon the rulings of 1982-II-LLJ-215 and 1995-I-LLJ-66. The facts of the above said rulings are distinguishable from the facts of our case.

23. The Memorandum of Settlement filed under Exh. U-8 and the settlement of Annexure 'B' of the complaint whether are connected with each other and the categories of the workmen and the designations of the Complainants whether covered by it or not, has not been proved by the Complainant. Hence, no unfair labour practice has been committed by the Respondents or the Respondents have not engaged in it. Therefore, the Complainants are not entitled to get any reliefs. Hence, Issue Nos. 4 and 5 are answered accordingly and pass the following order :—

Order

The complaint stands dismissed with no order as to costs.

V. P. ROTHE,
Member,
Industrial Court, Mumbai.

Mumbai,
dated the 2nd July 2002.

(Signed)
Registrar,
Industrial Court, Mumbai,
dated the 2nd July 2002.

INDUSTRIAL COURT MAHARASHTRA AT MUMBAI

BEFORE SHRI U. R. PATIL, PRESIDENT

REVISION APPLICATION (ULP) No. 36 OF 2002 In Complaint (ULP) No. 256/1997.— Sajjan Hari Ballal, Worli B.D.D. Chawl No. 3, R. No. 66, Worli, Mumbai-18—*Applicant Versus* (1) Maharashtra State Road Transport Corporation, Vahatuk Bhavan, Mumbai Central, Mumbai, (2) The Depot Manager, Parel Depot, M.S.R.T.C—*Respondents.*

In the matter of Revision U/s. 44 of the M. R. T. U. and P. U. L. P. Act, 1971.

CORAM.— Shri U. R. Patil, President.

Appearances.— Shri S. A. Khanolkar, Ld. Advocate for the Applicant.

Shri B. K. Hegade, Ld. Advocate for the Respondents.

Oral Judgement

(8th July 2002)

The Revision in question is preferred by the Original Complainant against the judgment and order dated 30th November 2000 in Complaint (ULP) No. 256/97 whereby the 3rd Labour Court, Mumbai dismissed the Complaint of the Complainant.

2. The brief facts giving rise to the case may be stated as follows :—

It is seen that the Complainant Shri Sajjan Hari Ballal was working as a Conductor with the Respondents. On 25th November 1991 he was on duty and the bus was approaching Parel Depot from Titawali. According to the Complainant after reaching the Parel Depot, he immediately went to St. George Hospital and hence could not deposit the cash of Rs. 2,285 with the Cashier of the Ticket Department. The Complainant states that he was admitted in the St. George Hospital on 25th November 1991 and was discharged on 23rd December 1991 when he became fit to do so. The Complainant states that immediately on the next date of his duty *i.e.* on 24th December 1991 he deposited the cash of Rs. 2,285 in the Depot. The Complainant in support of his contentions filed Medical Certificate and acknowledgment receipt of the Ticket Department of receiving the said cash which are at Exh. 'A' and 'B' respectively. The Complainant further states that due to compelling circumstances there was only 29 days delay in depositing the amount with the Respondents.

3. The Complainant further submitted that he was charged under clause A-9, 10, 11-A, 12-B by issuing a charge-sheet dated 29th November 1991 and the enquiry took place on 24th January 1992 and the same was concluded on the same day by the Enquiry Officer without assessing the statement of the Complainant and the documents produced by him, and order of dismissal came to be passed on 19th February 1992. Two appears preferred by the Complainant were rejected on 20th January 1993 and 16th August 1993 and thereafter the Complainant filed the present complaint in the Labour Court.

4. Now the main contention of the Complainant is that the enquiry was not conducted properly and the principles of natural justice were not followed. The action taken by the Respondent is for a minor misconduct or technical character, without having any regard to the nature of misconduct since his past record is clean and therefore the dismissal from services is a shockingly disproportionate punishment. On these and other grounds, the Complainant requested for setting aside the dismissal order and for reinstatement with backwages, etc. as mentioned in the prayer clause of the complaint.

5. The Respondents defended the complaint by filing Written Statement and the same may be narrated as under :—

It is contended that the complaint filed by the Complainant is misconceived, false, baseless and mischievous. It is submitted that the charge-sheet dated 29th November 1991 was issued to the Complainant on the acts of misconduct under Clause Nos. 9, 10, 11 and 12(*b*). He was given full opportunity to defend his case and the principles of natural justice were followed. It is asserted that on the basis of the record available before the Enquiry Officer, order of dismissal from service w.e.f. 19th February, 1992 is proper *vis-a-vis* the charge for dishonesty or misappropriation in connection with the business or property of the Corporation.

6. The Respondents further submitted that the show-cause notice dated 27th January, 1992 was issued to the Complainant as to why he should not be dismissed w.e.f. 19th February, 1992. It is also one of the contention that the Complainant was punished on 14th different occasions, out of which one case was of misappropriation of the revenue of the Respondents and in the instant case also the Complainant was found guilty of grave and serious act of misconduct of misappropriation of funds. In short, it is submitted that there is no substance in the grievance made by the Complainant and the punishment of dismissal is appropriate, one.

7. I have called for the record and proceedings and gone through the same. Heard Mr. S. A. Khanolkar, Ld. Advocate for the Applicant and Mr. B. K. Hegade, Ld. Advocate for the Respondents. The following points arise for my determination, with my findings thereon, as below :—

Points

(1) Whether Revision Application (ULP) No. 36/2002 is to be allowed by setting aside the judgment and order of the Labour Court dated 30th November 2000 ?

(2) What order and relief ?

Findings

Point No. 1 — No.

Point No. 2 — Please see final order.

Reasons

8. *Point No. 1* :—At the initial stage it is necessary to place on record that the Applicant's Advocate Shri S. A. Khanolkar submitted that in the Revision the Applicant is pressing the point of disproportionate punishment *viz.* of dismissal *vis-s-vis* the charge levelled against the delinquent. In view of this position, it is not necessary for this Court to go into the other aspects *viz.* regarding unfair labour practice under item 1(*a*), (*b*), (*d*), (*f*) and (*g*) of Schedule-IV of the M.R.T.U. and P.U.L.P. Act, and therefore the only point which remains for consideration is whether the punishment of dismissal of the Applicant is disproportionate or not.

9. Record and proceedings reveal that the Applicant Bus Conductor was on duty on 25th November 1991 and his bus was proceedings from Tithavli to Parel Depot and on the said day while on duty, the Bus Conductor had collected cash of Rs. 2,285 *i.e.* revenue against the sold tickets. Now the main contention of Ld. Advocate Shri Khanolkar for the Applicant is that on 25th November 1991 the bus Conductor could not deposit the said amount in the Cash Department because on reaching the Parel Depot, the delinquent bus conductor was not feeling well because of giddiness and vomiting and he straightway went home and with the assistance of his wife, he was hospitalised in St. Georges Hospital, Mumbai. Mr. Khanolkar further pointed out that the Bus Conductor was hospitalised from 25th November 1991 to 23rd December 1991. Thereafter he immediately on 24th December 1991 deposited the amount with the Cash Department of the Corporation, Parel Depot. In support of his submission Mr. Khanolkar invited my attention to the medical certificate and on seeing the same, it shows that the Bus Conductor Mr. Ballal was admitted w.e.f. 25th November 1991 and was discharged on 23rd December 1991 on being found fit for duties. There is also a receipt which is at Exh. B showing that the amount in question was deposited by the deliquent Conductor. Realising this position, Mr. Khanolkar urged that because of the difficulty *i.e.* ill-health, the amount could not be deposited and there was no question of misappropriation of the amount by the delinquent Conductor. Thus Mr. Khanolkar urged that the *bonafides* on the part of the Conductor be considered. In support of his submission he invited my attention to a case reported in *1992 II CLR 117* (Ganikhan *V/s.* Maharashtra State Road Transport Corporation). On going through this case it shows that the Petitioner had committed a theft of 5 liters of diesel of value less than Rs. 10. Held that dismissal of Petitioner for theft of diesel worth less than Rs. 10 is disproportionate and is entitled to reinstatement. Mr. Khanolkar also pointed out a decision in Appeal No. 202 of 2002 in Writ Petition No. 3043 of 2001 (The Brihanmumbai Municipal Corporation *V/s.* The General Secretary, BEST Workers' Union) dated 16th April, 2002 of the Hon'ble Bombay High Court. It shows that in the said case, the employee was found to be guilty

of theft of ball-bearings costing more than Rs. 2,000. While deciding the said case, the Hon'ble High Court has made a reference to the case reported in *2000 II CLR 568* (Jantha Bazar *V/s.* Secy., Sahakari N. Sangha etc.). The Hon'ble Supreme Court has criticised in strong words the tendency of showing sympathy to deliquent employee in cases of misappropriation. While deciding the Writ Petition, it appears that the Hon'ble High Court suggested that the employee be allowed to be superannuated as on the date of the decision of the Labour Court and he be paid his retrial dues, and this suggestion was accepted by the Ld. Counsel appearing for the Respondent and he further staged that he is ready to give up his claim of reinstatement and backwages if he was allowed to be superannuated as on the date of the order of the Labour Court. In view of the aforesaid position, the Hon'ble High Court set aside the impugned order of the Singh Judge as well as the order of the Labour Court and Industrial Court and the Appellant was directed to treat the 2nd Respondent workman as superannuated from service with effect from the order of the Labour Court dated 27th February 2001 and to pay all his retrial dues as permissible by the Rules. Thus relying on the aforesaid cases, Mr. Khanolkar argued that in the present case misconduct is of a minor nature and when past record is clean, the punishment of dismissal from service is shockingly disproportionate and hence canvassed that the Labour Court has failed to a appreciate the facts and circumstances and therefore the order dated 30th November 2000 be set aside.

10. It is important to note that the departmental enquiry was conducted by issuing a charge-sheet dated 29th November 1991 under the Discipline and Appeal Procedure and in the enquiry the delinquent Bus Conductor participated, but failed to negative to the charges levelled against him. On perusal of the report of the Enquiry Officer, it indicates that the statements of Corporation's witnesses were recorded and infact nothing is revealed in the cross-examination in support of the delinquent Bus Conductor. It is important to note that the delinquent Bus Conductor on 25th November 1991 was on duty and the Bus was coming from Tithavli to Parel Depot and it had already reached the Parel Depot. It is pertinent to note that after reaching of the bus at the Parel Depot, infact he should have deposited the amount to Cash Department of The S. T. Corporation at Parel Depot. Much was canvassed by Mr. Khanolkar that the Conductor was feeling gildy and he was vomitting and therefore he immediately rushed to his house. The said submission cannot be accepted for a simple reason that it was rather easy for the Bus Conductor to deposit the amount immediately after alighting from the Bus, but he failed to do so and straightway proceeded to his house. According to the Complainant *i.e.* Applicant herein, on reaching his house, his wife took him to St. Georges Hospital and he was admitted there. Therefore, it was for the delinquent Bus Conductor or his wife to deposit the amount of Rs. 2,285 which was collected by the delinquent Bus Conductor, but he failed to do so and deposited the same only after discharge from the Hospital *i.e.* on 24th December 1991. The Medical Certificate produced by the delinquent Bus Conductor only shows that he was hospitalised for epidemic disease and he was discharged on 23rd December 1991. There is no specific mention in the Medical Certificate that the Complainant was advised total bed-rest. It was for the Complainant to handover the said amount to his wife for depositing the same in the Cash Department. One of the submission advanced by Mr. Khanolkar was that the delinquent had sent a message through his wife regarding his illness, but there is no evidence to that effect and if it was so, she should have carried the said amount for depositing it in the Cash Department. Thus it is rather difficult to accept the submission advanced by Mr. Khanolkar.

11. Mr. Hegade, Ld. Advocate for the Respondents supported the judgment of the Labour Court and argued that the delinquent Bus Conductor could have immediately handed over the amount to Parel Depot. The substance of the submission of Mr. Hegade is that the Labour Court has considered all the aspects in the matter and with holding the amount by the Bus Conductor for the period of about 29 days attracts the provisions of Discipline and Appeal Procedure and particularly clause 12(*b*) which pertains to dishonesty or misappropriation. Mr. S. A. Khanolkar contended that though the amount was with the Bus Conductor, but he has not misappropriated the same and therefore the provisions of the aforesaid Rule 12(*b*) is not attracted because he has not utilised the amount for his own purpose. The said contention cannot be accepted for the reason that whether the amount was misappropriated or not, but the fact remains that for

29 days, the amount was withhold and hence the delinquent Bus Conductor has committed the misconduct under the aforesaid rule. Mr. Hegade in support of his submission also relied on a case reported in *1997 II-CLR 1018* (Blue Star Ltd. *V/s.* Blue Star Workers Union, Mumbai and another), which was in respect of employees of the Petitioner who entered the cabin of the Manager (P and A) without permission and geared him. It has been held that on careful reading of sec. 30, it is clear that the Industrial Court had no power to issue impugned directions when it has found that no unfair labour practice was committed. Mr. Hegde also placed reliance on a case reported in *1997 I-CLR-868* (Kirloskar Cummins Ltd. *V/s.* Subhash Shripati Darekar and Others). In this case, it has been that the Industrial Court has done precisely what it could not have done in as much as it has interfered with the findings of fact under the guise of exercising the revisional powers. Thus relying on the aforesaid 2 cases, Mr. Hegde stressed that this Court u/s. 44 of the M.R.T.U. and P.U.L.P. Act cannot exercise the powers unless and until it is pointed out that the reasoning and order passed by the Labour Court is not consistent with the record.

12. On carefully examining the facts and circumstances of the case in hand when there is no unfair labour practice being committed while conducting the departmental enquiry, the Court has carefully and legally to see whether the punishment is shockingly disproportionate and thereby committed unfair labour practice *vis-a-vis* the proved charge. In the case in hand, as detailed above, I don't find any error or mistake on the part of the Labour Court while coming to the conclusion that the punishment of dismissal is not shockingly disproportionate. It is seen that the Applicant in the past was punished on 14 occasions, out of which one case was of misappropriation of the revenue of the Respondent. Thus under the aforesaid position, it cannot be said that the past record of the delinquent is clean. It is important to note that while the Respondent S. T. Corporation is plying the buses all over the Maharashtra State, the staff engaged by such Corporation is expected to be honest to the employer and if the revenue collected by the Bus Conductor while on duty is withheld for a considerable period or is misappropriated, it will cause financial loss to the Corporation and then it will be rather difficult to discharge the function of transportation of the public at large. In the case in hand, I don't find that u/s. 44 of the M.R.T.U. and P.U.L.P. Act, a case has been made out by the Applicant to call for the interference of the Industrial Court because in the impugned judgment, the Labour Court has carefully scrutinised the report of the Enquiry Officer and the facts involved in the matter and hence it is difficult to exercise the revisional powers u/s. 44 of the M.R.T.U. and P.U.L.P. Act. Thus in totality the Applicant has failed to prove exception to the impugned judgment and order and therefore, I, answer the Point No. 1 in the Negative.

13. *Point No. 2.*—In view of the foregoing reasons, I pass the following order :—

Order

Revision Application (ULP) No. 36 of 2002 is dismissed.

No order as to costs.

R and P be sent back.

U. R. PATIL,
President,
Industrial Court, Maharashtra, Mumbai.

Mumbai,
Dated the 8th July 2002.

K. G. SATHE,
Registrar,
Industrial Court, Mumbai.
Dated the 18th July 2002.

ON BEHALF OF GOVERNMENT PRINTING, STATIONERY AND PUBLICATION, PRINTED AND PUBLISHED BY SHRI PARSHURAM JAGANNATH GOSAVI, PRINTED AT GOVERNMENT CENTRAL PRESS, 21-A, NETAJI SUBHASH ROAD, CHARNI ROAD, MUMBAI 400 004 AND PUBLISHED AT DIRECTORATE OF GOVERNMENT PRINTING, STATIONERY AND PUBLICATION, 21-A, NETAJI SUBHASH ROAD, CHARNI ROAD, MUMBAI 400 004, EDITOR : SHRI PARSHURAM JAGANNATH GOSAVI.